



## **12th Annual EU-NGO Forum for Human Rights**

### **EU Human Rights Instruments and the Lisbon Treaty: State of Play and Way Forward Brussels, Belgium**

12-13 July 2010

## **FINAL REPORT**

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#### ***Disclaimer***

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## EXECUTIVE SUMMARY

The European Union is committed to enhancing and deepening its communication and exchanges with civil society organisations (CSOs) in the field of human rights and democratisation. The 12<sup>th</sup> Annual EU-NGO Human Rights Forum (Forum) was co-organized by the European Commission through the European Instrument for Democracy and Human Rights (EIDHR) and Belgium. The Forum provides a high profile platform for interactive discussion among CSO representatives, the EU institutions (the European Commission, Council and Parliament), and Member States, thereby helping to strengthen future EU strategy and policy making, as well as the development and implementation of EU programs and projects. Civil society is afforded an enhanced opportunity to contribute to EU policy development and at the same time the EU can better draw upon civil society experience and reflect upon lessons learned.

### **Theme of the 2010 Forum**

The Treaty of Lisbon, a major landmark in the EU's institutional development, brings about a number of important and positive changes with regard to EU human rights policy formation and implementation. The Forum was therefore convened at an opportune time, only a few months after the Treaty's entry into force, to explore the possible human rights implications brought about by the Treaty, in particular, with regard to EU policy priorities and new human rights challenges and prospects.

In terms of institutional changes, a new permanent position of the President of the European Council was established during a meeting of EU Heads of State and Government on 19 November 2009 to provide greater continuity and stability to the Council's work. Second, the Lisbon Treaty establishes a High Representative of the Union for Foreign Affairs and Security Policy who also holds the post of Vice-President of the Commission, and chairs the External Relations Council in order to simplify EU representation in foreign relations and the EU's capacity to speak with one voice. This cross-appointment promotes coherence in the EU's external action by conferring upon one person two major fields of responsibility and helps to raise the EU's profile globally. Third, the Lisbon Treaty introduces a new European Citizens' Initiative allowing citizens to submit any appropriate proposal on any matter which they consider requires the adoption of a legal act by the Union with a view to implementing the Treaty itself.

The Lisbon Treaty also affirms that EU Member States recognize the Charter of Fundamental Rights of the European Union as a legally binding instrument equal in juridical value to the other main treaties of the Union. The Lisbon Treaty also obliges the EU to accede to the European Convention on Human Rights and Fundamental Freedoms and it recognizes that the human rights guarantees set forth therein constitute "general principles of the Union's law". Other important Lisbon Treaty provisions oblige EU institutions to respect the Charter's rights and Member States are likewise placed under the same obligation as regards their implementation of EU legislation.

In short, the Treaty of Lisbon opens up a wide range of exciting new avenues and the Forum provided an opportunity for CSOs and the EU to consider together the practical implications

of these changes for the better promotion and protection of human rights inside the EU and in its external relations.

The Forum opened with addresses from Mr. Steven Vanackere, Minister of Foreign Affairs of Belgium, Mrs. Catherine Ashton, High Representative of the European Union for Foreign Affairs and Security Policy (video message), Mr. Koos Richelle, Director-General, EuropeAid, European Commission, Mrs. Heather Grabbe, Director, Open Society Institute (Brussels) on behalf of the Human Rights and Democracy Network, and Mrs. Irene Khan, international human rights expert.

## **The Workshops**

The implications of the Lisbon Treaty in EU internal and external human rights policy and action were discussed in four workshops according to the following Forum subthemes:

- Working Group I: “EU Instruments in the Fight against the Death Penalty”
- Working Group II: “The EU's Role for the Promotion and Protection of Economic, Social and Cultural Rights”
- Working Group III: “The EU's Relations with Regional Human Rights Mechanisms”
- Working Group IV: “Lisbon and the EU's Internal-External Consistency”

Workshop I on "EU Instruments in the Fight Against the Death Penalty", moderated by Mr. Marc Bossuyt, President of the Belgian Constitutional Court and Chair of the UN Commission on Human Rights in 1989 when it adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, noted that the EU took the lead in the adoption of General Assembly resolutions calling for retentionist countries to adopt death penalty moratoria and in a range of other fora. Mr Timans, Head of the Human Rights Unit of the European Commission's Directorate for External Relations, gave an overview of existing EU human rights instruments, in particular, those relevant to the fight against the death penalty, and he highlighted the possible impact of the Lisbon Treaty on the application of these instruments. Mr. Yorke, a Professor at Birmingham City University, highlighted a need for EU support to develop a PhD community to provide regular information to the Office of the High Representative in order to enable the Office to react more quickly to death penalty cases and situations. Participants also reflected upon possible inconsistencies in EU death penalty debates and policies. In her presentation, Ms. Tagusari of the Center for Prisoners Rights, Japan, observed that although Japan had not executed anyone since the latest major political change a year ago, this did not amount to a *de facto* moratorium. Mr Dieter, of the Death Penalty Information Center, USA, summarised some of the actions the EU had taken to oppose the death penalty in the United States and then described some of the latest developments in the use of the death penalty in the country. Ms. Taghreed Jaber, of Penal Reform International, first presented the situation in the Middle East and North Africa before proposing ways to optimise the use of EU instruments to support the fight against the death penalty. One participant described the work of the Murder Victims' Families for Human Rights (MVFHR). The EU was encouraged to provide judges and police in retentionist states with improved sentencing guidelines, to support public education campaigns and training for EU and national parliamentarians and decision-makers as well as for police and prosecutors, to promote more transparency in the justice systems in

retentionist States, and to cooperate better with NGOs, international organisations and retentionist States.

Workshop II on “The EU's Role for the Promotion and Protection of Economic, Social and Cultural Rights”, moderated by Mr. Charles-Michel Geurts, Deputy Head of the Human Rights Unit in the Directorate-General for External Relations of the European Commission, considered that the integration of economic social and cultural rights in EU external human rights policy was a ‘work in progress’. All EU Member States had ratified the International Covenant on Economic, Social and Cultural Rights (although a few had not yet ratified its Optional Protocol), as well as the European Social Charter, and had supported the 1993 Vienna Declaration and Programme of Action on Human Rights which reaffirmed the universality, indivisibility, interdependence and interrelatedness of all human rights. The European Charter of Fundamental Rights, now legally binding with the same force as the EU treaty, prominently featured economic, social and cultural rights. The EU had made progress in bringing human rights-based approaches into trade and development policies and in championing the Millennium Development Goals (UNMDGs). Mr. Olivier de Schutter, the UN Special Rapporteur on the Right to Food, emphasized the significance of the EU's promotion of economic and social rights, and stressed that it was first and foremost a matter of credibility for the EU to impose on itself what it imposed on others. He further discussed the EU generalized system of preferences (GSP) and the context in which economic, social and cultural rights should be promoted in EU policy. Drawing on his first hand experience as the Head of Operations of the EU Delegation to Guatemala, Mr. Pedro Henriques discussed the EU's promotion of economic, social and cultural rights in Guatemala. Participants also referred to situations in Malaysia, India, certain South American countries, and the role of the Association of Southeast Asian Nations. Mr. Denis Haveaux, UNAIDS Liaison Officer to the EU, drew from his experience to explain the available instruments and mechanisms that could be used by the EU to respond to the challenge of HIV/AIDS.

Workshop III on “The EU's Relations with Regional Human Rights Mechanisms”, moderated by Mr. Michel Tilemans, Human Rights Director at the Belgian Ministry of Foreign Affairs considered some of the main changes introduced by the Treaty of Lisbon. Ms. Snjezana Bokulic, Head of the Human Rights Department of OSCE / ODIHR, recalled that the OSCE, along with EU and the Council of Europe, formed part of the European human rights regional framework. She recommended closer cooperation between the EU and the OSCE / ODIHR on specific or thematic areas. After summarizing the Council of Europe's main competencies and tasks, Mr. Humbert de Biolley, Representative of the Council of Europe and Deputy Director of the Council of Europe Brussels Office, pointed out that the relations between the Council of Europe and the EU were from the outset very close and complex. Mr. Haris Azhar, of Solidarity for Asian People's Advocacy (SAPA) Task Force on ASEAN and Human Rights, focused on ASEAN's Intergovernmental Commission on Human Rights (AICHR). Ms. Ariela Peralta, Deputy Director of El Centro por la Justicia y el Derecho Internacional / Centre for Justice and International Law - CEJIL, provided insight into the Inter-American human rights system and provided a detailed and comprehensive analysis of the history, mandates and internal procedures of the two bodies underpinning the system of human rights protection within the Organization of the American States (OAS), namely the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

Workshop IV on “Lisbon and the EU's Internal- External Consistency” was moderated by Ms. Véronique de Keyser, a Belgian member of the European Parliament (EP), sitting on the Sub-Commission on Human Rights (DROI). Ms. Karen Moeskoeps of Amnesty International (AI) pointed out that, although the EU was a human rights promoter outside Europe, this did not necessarily translate into automatic respect of human rights inside the EU. Violations of human rights within the EU undermined its credibility as a whole and of EU Member States individually. If the EU wanted to maintain leadership on human rights issues globally, its policies had to display greater coherence and it had to implement fully human rights guarantees internally. Ms. Ilze Brands Kehris, Chairperson of the Management Board of the Fundamental Rights Agency (FRA), confirmed that external partners often called upon the EU to react to human rights violations within the EU and that acceding or candidate countries also raised regularly the issue of double standards applied by the EU, especially in connection with the EU's accession policy. Ms. Linnéa Arvidsson, of the Brussels-based European Regional Office of the UN High Commissioner on Human Rights, emphasized that consistency was paramount in maintaining the credibility of the EU's external policy relating to human rights. In this regard, she encouraged EU Member States to employ UN standards as a means by which to improve internal-external coherence in EU human rights policy. She recalled that EU Member States were in any case generally parties to most of the core UN human rights conventions, except for the UN Convention on the Rights of Migrants and certain Optional Protocols. Mr. Aurel Ciobanu-Dordea, Director of the European Commission's Fundamental Rights Unit, recalled that the Lisbon Treaty and the Charter on Human Rights were bringing about important changes, particularly by including fundamental rights more fully into policies such as those relating to security, asylum and migration. Mr. Geoffrey Harris, Head of the Secretariat of the DROI Committee in the European Parliament, provided a synopsis of the European Parliament's perspective. Mr. Antoine Madelin, Permanent Representative of the Office of the International Federation for Human Rights (FIDH) to the EU in Brussels, argued that the EU could use a ‘toolbox’ to enhance internal-external human rights policy, but still show a deficit in policy coherence within its external policy.

The closing session of the Forum featured statements from Mr. Jan Luykx, Director of the Cabinet of the Belgian Minister for Development Cooperation, Mr. Christian Leffler, Deputy Director-General, Directorate-General Development, European Commission, Mrs. Heidi Hautala, Chair of the European Parliament Subcommittee on Human Rights and Mr. Dismas Kitenge, President of the Groupe Lotus (Democratic Republic of Congo) and Vice-President of FIDH.

This Final Report includes the Forum's recommendations and a synopsis of each working group discussion. Annexed to the report are: the Forum's agenda; the five background papers outlining some of the human rights implications brought about by the Lisbon Treaty's entry into force and the rationale behind each of the workshop themes; as well as the list of participants.





European Commission

## 12th EU-NGO Forum on Human Rights

Brussels, 12 & 13 July 2010

### **Recommendations of the Forum on “EU Human Rights Instruments and the Lisbon Treaty: State of Play and Way Forward”**

The 12th EU NGO Forum on Human Rights which addressed the issue of “EU Human Rights Instruments and the Lisbon Treaty: State of Play and Way Forward”, was held in Brussels on 12 and 13 July 2010. It featured four workshops comprising representatives of the EU, EU Member States and civil society, particularly from the global South, as well as international experts. The Forum focused on human rights issues of current concern to the EU and the international community at large, in particular:

Working Group I on	“EU Instruments in the Fight against the Death Penalty”
Working Group II on	“The EU’s Role for the Promotion and Protection of Economic, Social and Cultural Rights”
Working Group III on	“The EU’s Relations with Regional Human Rights Mechanisms”
Working Group IV on	“Lisbon and the EU’s Internal-External Consistency”

Following the Forum’s opening plenary session, each workshop met to discuss challenges and opportunities concerning the EU’s interaction with human rights NGOs against the backdrop of the entry into force of the Lisbon Treaty and the changes the Treaty has introduced into EU structures and functions relating to human rights strategy making, policy formulation and the implementation of programmes and projects. Each workshop drafted and agreed upon a set of recommendations under the guidance of the workshop moderator. Each of the four moderators then provided a synopsis and set forth the recommendations at the Forum’s closing plenary session. The present document sets forth the recommendations that emerged from the rich interaction and debate that characterized the 2010 Forum’s proceedings, according to the workshop themes.

#### **Workshop I: EU Instruments in the Fight against the Death Penalty**

The Workshop affirmed that the global abolition of the death penalty ranks among the main objectives of EU human rights policy. Four key elements formed the basis for the Workshop’s recommendations as follows:

- coherence and consistency;
- cooperation;
- education, awareness-raising; and
- efficiency and effectiveness.

## **1. Coherence and Consistency**

*The EU should:*

- a. ensure consistency in its discourse. Article 6 of the Lisbon Treaty recognises that the rights, freedoms and principles set out in the EU Charter of Fundamental Rights form part of EU law. Furthermore, the EU is obliged to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Wherever norms and standards appear to conflict, the higher threshold of human rights protection should prevail.
- b. raise regularly the issue of the abolition of the death penalty in its political contacts and discussions with third countries through the High Representative of the Union for Foreign Affairs and Security Policy.
- c. continue calling for compliance with international minimum standards as set out by the UN Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty and as reaffirmed and further developed by the EU Guidelines on the Death Penalty as regards retentionist countries.
- d. deal with death penalty issues in connection with all other relevant human rights issues such as those relating to due process of law, right to fair trial, the right to appeal, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment (in connection with methods of execution) and the basic human right to dignity. Human rights are interconnected and issues surrounding the death penalty should be viewed through the human rights lens.
- e. continue to ensure that, as stated in Article 19(2) of the EU Charter of Fundamental Rights, no one may be removed, expelled or extradited to a state where there is a serious risk that he or she will be subjected to the death penalty.
- f. encourage ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and of relevant regional instruments such as Protocol 13 to the European Convention on Human Rights and Fundamental Freedoms, by all States, including EU Member States.
- g. reassess its support and aid policy to retentionist countries and countries which violate human rights. The abolition of the death penalty could be raised in discussions relating to development aid and EU-funded programs. EU humanitarian aid on the other hand should always be unconditional.
- h. take into consideration concrete steps that may have been taken towards human rights protection including the abolition of the death penalty when granting financial assistance and enhancing relations with third countries, in particular with neighbouring countries.
- i. ensure greater coherence among various EU institutions and among EU Member State actions and policies in relation to the death penalty.

## **2. Cooperation**

*The EU should:*

- a. develop continuous, systematic and strategic consultation with NGOs to reassess local needs and situations on the ground regularly.



- b. support the World Coalition against the Death Penalty initiative to set up an international database that could function as a forum through which the EU and NGOs can publish updates on their respective work and actions.
- c. support the development of an academic community on the abolition of the death penalty.
- d. consult local NGOs and lawyers to identify when EU action is needed on individual cases.
- e. provide technical support to:
  - i. regional bodies such as the African Commission and the Arab League through the sharing of EU knowledge and expertise in the promotion and protection of human rights;
  - ii. NGOs, through the sharing of EU country best practices and lessons learned drawing on EU experience, briefing papers, etc. including for example through the European External Action Service;
  - iii. regional NGO networks.
- f. cooperate with and support UN bodies and especially the work of the UN Human Rights Council Special Rapporteur on the Prevention of Torture and Extrajudicial, Summary or Arbitrary Executions, and draw upon the recommendations arising from the Universal Periodic Review and UN human rights treaty body mechanisms to remind States of their obligations.
- g. provide financial support to enable NGOs and human rights defenders to continue their work on the abolition of the death penalty.
- h. also support States that are taking steps towards a moratorium on the death penalty or the abolition of the death penalty. In this regard, visits of observers from the international community could be particularly effective as well as pressure through the media and other avenues available to the international community.
- i. politically support human rights defenders who call for the abolition of the death penalty and in individual cases, wherever EU guidelines may have been violated.
- j. try to engage companies doing business in retentionist countries in the fight against the death penalty.
- k. close current loopholes in EU regulations banning the trade in death penalty equipment and ensure its better implementation by EU Member States, whilst also actively promoting the development of further regional and international instruments in this area.
- l. cooperate with countries that have adopted a moratorium on the death penalty or which have abolished the death penalty to act as intermediaries to initiate discussions with neighbouring retentionist states.

### **3. Education and awareness-raising**

*The EU should:*

- a. adopt a human rights based approach to offenders in particular:
  - i. to support the launching of public campaigns, notably in schools and through the media to address public concern over such issues as impunity, reparations, deterrence, and to highlight the value of the possible rehabilitation of criminals through appropriate programs, as well

- as to spread awareness about the realities surrounding the death penalty and conditions of detention; and
    - ii. to support training, seminars and guidelines for judges, lawyers, prosecutors, police and prison personnel.
  - b. take into account fully the needs of victims and issues involving impunity and reparation.
  - c. support the implementation of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
  - d. foster the organisation of seminars for members of national parliaments as well as the creation of a network of parliamentarians for the abolition of the death penalty.
  - e. support initiatives that encourage education about the abolition of the death penalty.
  - f. finance research and campaigns in retentionist countries.
  - g. promote transparency on the part of retentionist countries by requesting information on executions to be sent to the High Representative of the Union for Foreign Affairs and Security Policy.

#### **4. Efficiency and effectiveness**

*The EU should:*

- a. adopt a strategic approach in particular to pay sufficient attention to the specific conditions of each country setting and the necessity to approach the human rights agenda in a focussed and realistic way, tackling each case with a detailed understanding of the country at hand.
- b. react through diplomatic means in a timely fashion to address individual cases of death penalty threats or political opportunities to move towards abolition.
- c. engage actively and take full advantage of abolitionist action taken through the UN in particular by supporting the upcoming UN resolution on a moratorium of the death penalty in cooperation with all cross-regional partners.

#### **Workshop II: The EU's Role for the Promotion and Protection of Economic, Social and Cultural Rights**

Workshop II focussed on numerous issues under the following main themes:

- the adoption of local human rights strategies;
- the full application of EU human rights guidelines to economic, social and cultural rights;
- the enhancement of EU credibility through improved internal / external consistency;
- trade and avoiding double standards;
- dialogue and development cooperation; and
- EU Delegations and EU staff.

### **1. The Adoption of Local Human Rights Strategies**

*The EU should:*

- a. adopt local human rights strategies that address economic, social and cultural rights in their wider context.
- b. in doing so, consider economic, social and cultural rights in relation to other issues involving human rights, human security and development.

### **2. The Full Application of EU Human Rights Guidelines to Economic, Social and Cultural Rights**

*The EU should:*

- a. maintain strong focus on the EU Guidelines on Human Rights Defenders.
- b. adjust the EU Guidelines to economic, social and cultural rights. For example, the EU Guidelines on Torture should take into consideration the economic and social root causes of torture.
- c. make full use of other relevant tools, such as the EU Guidelines for Support to Land Policy Design and Land Policy Reform.
- d. provide political support to civil society organisations and human rights defenders to help raise their legitimacy and profile.

### **3. EU Credibility: Internal / External Consistency**

*The EU should:*

- a. accede to the European Social Charter of the Council of Europe parallel with its accession to the European Convention on Human Rights and Fundamental Freedoms.
- b. make full use of the standards and norms of the Council of Europe and the Organization for Security and Cooperation in Europe when engaging with partner countries belonging to those organisations.
- c. encourage its Member States to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
- d. ensure that all EU legislation that has an external impact should protect economic, social and cultural rights for example by dropping the 'return directive'.
- e. take account of the impact of the EU Charter on Fundamental Rights on the EU's external action and level of accountability.
- f. encourage all Member States to abide by the highest standards and norms, for example, with regard to certain AIDS-related discriminatory practices.

#### **4. EU Credibility: Avoiding Double Standards**

*The EU should:*

- a. encourage EU companies to promote high economic, social and cultural rights standards and refrain from operating in situations of gross human rights violations. EU companies should apply uniform standards and refrain from operating abroad in conditions that differ from the standards that they have to apply at home.
- b. hold companies accountable for respecting economic, social and cultural rights in their operations abroad, moving from corporate social responsibility to business accountability.
- c. together with EU Member States, monitor business behaviour.
- d. look at best practices, such as to check for discrimination of companies from the West, working in India.
- e. be consistent in its engagement towards third countries (situation in Gaza).

#### **5. Trade**

*The EU should:*

- a. observe in its trade policy, as a minimum obligation, a ‘no harm policy’ on human rights, particularly with respect to vulnerable groups and small producers.
- b. make its human rights impact assessment on planned trade and association agreements more systematic.
- c. check to ensure that trade incentive schemes (GSP+) do not produce a discriminatory impact, that they remain transparent and conform to universal UN standards and that they ensure effective implementation through monitoring.
- d. be less reticent in applying conditionality, for example as regards free trade agreements in Colombia and Honduras and admission into the GSP+ framework as well as with regard to the negotiation of human rights clauses in conformity with international human rights law.

#### **6. Dialogue and development cooperation**

*The EU should:*

- a. adopt human rights based approaches in all aspects of its cooperation frameworks, for example, by respecting the right to non-discrimination, access to information, the right of interested parties to be consulted, and for NGOs, social partners and EU experts to be included in a broad-based social dialogue.
- b. champion human rights-based approaches to the UN Millennium Development Goals.
- c. take fully into consideration its obligations on economic, social and cultural rights in the context of multilateral development cooperation and coordination with such bodies as the European Investment Bank, the International Monetary Fund, the World Bank and the European Bank for Reconstruction and Development.
- d. promote close coordination among donors and stakeholders.

- e. promote effective participation of local civil society in the design, implementation, monitoring and evaluation of projects and programmes in all sectors, for example as regards human security in relation to food, water, waste reduction and elimination, health and education.
- f. mainstream in its political and policy dialogues and assistance in third countries key economic, social and cultural rights issues, such as:
  - i. gender and economic, social and cultural rights;
  - ii. sharing of benefits arising from economic activities for example, extractive industries;
  - iii. demographic considerations;
  - iv. human rights education, training, information and awareness raising;
  - v. focussing on prevention in relation to land and resources-related conflicts and forced displacements;
  - vi. best practices on right to food, for example, through cash transfer schemes;
  - vii. indigenous people and the application of customary law;
  - viii. access to education, training, including vocational training and research;
  - ix. HIV and persons with physical or mental disabilities;
  - x. specific situations concerning the rights of minorities and vulnerable populations, for example, the rights of detainees and persons with mental disabilities;
  - xi. the fight against impunity in situations of difficult economic or ecological conditions or rampant organised crime;
  - xii. the fight against corruption;
  - xiii. capacity building in economic, social and cultural rights, notably with regard to national human rights institutions, which should conform to the Paris Principles relating to the Status of National Institutions;
  - xiv. continued political and financial support to NGOs, especially in countries where there may be reduced space for operations, for example, through the European Instrument for Democracy and Human Rights's new strategy which addresses economic, social and cultural rights and the question of corporate social responsibility;
  - xv. the development of specific strategies on cooperation with civil society and the provision of enhanced support to independent civil society organisations. The EU should simplify its funding procedures for grassroots NGOs and consult with NGOs prior to the launch of call for proposals; and
  - xvi. funding of sustainable work of civil society projects.

## **7. EU Delegations and EU Staff**

*Further, the EU should:*

- a. ensure high level involvement on economic, social and cultural rights through its Ambassadors.
- b. ensure sufficient resources, training and exchange of best practices among EU Delegations.
- c. strengthen the role of EU Delegations on human rights defenders.

- d. encourage its Delegations and the Embassies of Member States to monitor promotion and protection of economic, social and cultural rights.
- e. ensure that EU Delegations and Member States undertake annual monitoring on the status and conduct of EU companies with regard to corporate social responsibility policies and make these reports public.
- f. use all available tools, such as the UN Human Rights Council's Universal Periodic Review recommendations, to promote effective engagement on economic, social and cultural rights.
- g. ensure that EU Delegations encourage partner countries to engage and consult fully with civil society, for example, with regard to preparing for the Universal Periodic Review process and implementing the recommendations arising from this process.

### **Workshop III: The EU's Relations with Regional Human Rights Mechanisms**

Workshop III considered the EU's relations with regional human rights mechanisms according to the following main themes:

- the EU's support to civil society organizations and human rights defenders;
- the EU's cooperation with regional organizations and mechanisms;
- the EU's relations with specific regional human rights mechanisms; and
- the EU and human rights multilateral fora.

#### **1. The EU's Support to Civil Society Organizations and Human Rights Defenders**

*The EU should:*

- a. ensure that human rights monitoring forms an integral part of a credible and coherent EU foreign policy based on ongoing relations with human rights defenders and civil society organizations dealing with human rights;
- b. support and associate more closely with civil society, in its relations with regional organisations and third countries, ensuring and encouraging the participation of civil society organizations and human rights defenders in high-level EU human rights events and dialogues.
- c. support and encourage the participation of civil society organizations into the drafting, implementation and assessment of human rights national and regional action plans in cooperation with regional human rights mechanisms.
- d. support the creation of civil society organization networks at the regional level, with an emphasis on including victims and survivors of human rights violations.
- e. share information on the situation of human rights defenders collected through its delegations with the Council of Europe Commissioner on Human Rights, the Organization for Security and Co-operation in Europe / Office for Democratic Institutions and Human Rights focal point on human rights defenders, the UN Special Rapporteur on the Situation of Human Rights Defenders, and regional intergovernmental bodies as may be appropriate.
- f. support and encourage civil society organizations to spearhead efforts to create, enhance, and support regional human rights mechanisms.

## **2. The EU's Cooperation with Regional Organizations and Mechanisms**

*The EU should:*

- a. building on its human rights dialogue with the African Union, engage in regular dialogues with other regional actors and human rights mechanisms, for example, those of the Association of Southeast Asian Nations and Organization of American States, with a view to sharing knowledge and expertise and addressing common challenges. The EU should ensure that civil society plays an integral role in these human rights dialogues.
- b. foster the establishment of effective regional mechanisms aimed at the protection of human rights, including at the judicial level.
- c. contribute to meeting the capacity building needs of, and to raising awareness on, existing and emerging regional and national human rights mechanisms.
- d. work with regional human rights mechanisms to encourage their Member States to adopt, review and implement human rights national actions plans, and to follow up on the implementation of UN recommendations, including those emanating from the UN Human Rights Council's Universal Periodic Review process.
- e. share and discuss its human rights guidelines and toolkits, for example the EU Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People, and the EU Guidelines on Human Rights Defenders, with regional organizations, and should support and cooperate in, their implementation.

## **3. The EU's Relations with Specific Regional Human Rights Mechanisms**

*The EU should:*

- a. address human rights issues in such a way as to avoid any discrepancy between the external and internal dimensions of its human rights policies in its relations with the Organization for Security and Cooperation in Europe and the Council of Europe.
- b. undertake to adhere to other Council of Europe conventions, once it has acceded to the European Convention on Human Rights.
- c. consider its relations with the Council of Europe, as reflected in the Memorandum of Understanding between the EU and the Council of Europe, as an example of best practices, which could serve as a model for framing EU relations with other regional human rights mechanisms.
- d. ensure that further EU human rights instruments and norms it may develop are compatible with existing conventions of the Council of Europe and commitments of the Organization for Security and Cooperation in Europe with a view to promoting the harmonious development of human rights protection in Europe.
- e. endeavour, together with the Organization for Security and Cooperation in Europe and the Council of Europe, to convey a coherent message, for example in the Eastern Partnership area, and to clarify their respective human rights mandates and mechanisms to third countries.
- f. reinforce its human rights mainstreaming efforts in all areas of its relations with regional organizations, in light of the entry into force of the Treaty of Lisbon.

- g. encourage regional human rights mechanisms to share best practices, in particular, to ensure better compliance of judgments and obligations.

#### **4. The EU and Human Rights Multilateral Fora**

*The EU should:*

- a. strengthen its cross-regional approaches in multilateral fora, for example in the UN Human Rights Council.
- b. support the work of the UN Office of the High Commissioner for Human Rights to further strengthen cooperation among regional human rights mechanisms. In particular, the UN's seminars provide an invaluable opportunity to exchange experience among regional organizations, regional human rights mechanisms and civil society organizations. The EU should therefore continue to support these seminars and other types of cooperation between the UN human rights treaty and Charter-based bodies in respect of their regional counterparts.

#### **Workshop IV: Lisbon and the EU's Internal-External Consistency**

Workshop IV considered that civil society expected the EU to improve consistency between its internal and external human rights policies which would allow the EU to play a greater, more effective and more credible role at the international level with a view to avoiding double standards. It further noted the following points:

- Despite the many European human rights instruments, numerous human rights problems persist in EU Member States (for example in the area of discrimination, Roma, sexual orientation, restrictions on religious freedom, the rights of asylum-seekers, police brutality, restrictions on press freedoms). While there is no need to add national or European human rights instruments beyond those of the Council of Europe and European Court of Human Rights, UN treaty bodies and Human Rights Council etc., the EU as a whole does not have effective tools to ensure and support human rights protection within its borders.

The EU has numerous bodies, instruments and mechanisms which have been reinforced by the Lisbon Treaty, for example bodies such as, the EU Agency for Fundamental Rights, the European External Action Service, the Council Working Group on Human Rights (COHOM), the Council Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons, and the Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) and Subcommittee on Human Rights (DROI). However, until now the EU has had no functioning mechanism or official "address" for reports on internal human rights violations.

- this lack of mechanism and response has a critical impact on external relations, where the EU as a whole has had no means of responding to criticisms of its own human rights record, even to offer practical information on the measures that are being taken by member states to address existing problems. This is increasingly threatening the EU's credibility and impact through dialogues and other human rights instruments with third countries.



- it would not seem useful to increase further the number of European wide and EU legal mechanisms but rather to reinforce coherence among them, their connections, transparency (external visibility of dialogues) and monitoring. It is about implementing words in actual policies and action;
- a series of testimonies were evoked which require careful attention in terms of protecting human rights defenders in Kazakhstan, Saudi Arabia, Uzbekistan, Kyrgyzstan, China, Moldavia and Africa; and
- among the themes most highlighted were the internet, rights of the child, exploitation, human trafficking, women in Africa, victims of torture and the issue of rehabilitation, the rights of lesbians, gay, bisexual and transgender persons, migrants and asylum seekers, financial and political difficulties of human rights NGOs and corporate accountability.

## **1. Internal Dimension**

*The EU should:*

- a. introduce into the EU legislative process the respect for international human rights standards, starting from the European Commission's proposal up to the adoption of texts by the European Council and Parliament.
- b. reinforce a cross-EU monitoring mechanism, early warning through the Fundamental Rights Agency, civil society and UN mechanisms, such as the Universal Periodic Review.
- c. make dissuasive use of Article 7 of the Treaty on the European Union according to which the Union can suspend certain rights of a Member State deriving from the application of the Treaty, if it has determined the existence of a serious and persistent breach of the principles of liberty, democracy, respect for human rights and fundamental freedoms, by that Member State.
- d. ensure that the Council working party on Fundamental Rights, Citizens Rights and Free Movement of Persons has a mandate distinct from that of COHOM, which could include, for example, discussing and responding officially to reports of the Fundamental Rights Agency (in addition to recommendations of UN treaty bodies, special procedures and mechanisms); assessing the external human rights impact of internal EU instruments and policies (together with COHOM); ensuring coordination with agencies without a human rights mandate but human rights impact (e.g. EIB or FRONTEX); examining EU and EU member state signature, ratification and compliance with international human rights instruments; and generally providing a forum for Council exchanges on internal human rights matters.
- e. promote transparency and consultation with civil society.

## **2. Internal / External Dimension**

*The EU should:*

- a. ensure close cooperation between those responsible for internal and external policies, including within the College of Commissioners – most notably between the High Representative of the Union for Foreign Affairs and Security Policy (Catherine Ashton), and European Commissioner for Justice, Fundamental Rights and Citizenship (Viviane Reding) - with an aim to developing coherent internal and external human rights mechanisms.
- b. ensure cooperation between the Council's external and internal mechanisms on human rights, in particular through close cooperation between the Council Working Group on Human Rights (COHOM) and the new Council Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons.
- c. ensure better cooperation among Council, Commission and Parliament as regards reports and humanitarian emergencies etc.
- d. strengthen sharing mechanisms and the judicious use of best practices.
- e. enable external EU officials and spokespeople to respond to human rights criticism by third countries with an acknowledgement of facts and the measures undertaken by the EU and member states to address any violations.

## **3. External Dimension**

*The EU should:*

- a. create a consistent foreign policy on human rights, including in trade and development through partnership agreements, and drawing upon Articles 8 and 13 of the Cotonou Agreement, knowing that the EU has different leverage options according to agreements or the particular relations it has with certain countries. The EU should avoid that dilemmas such as transparency versus discreet diplomacy, encouragement versus sanctions, etc. create double standards. The EU has to achieve results in this area.
- b. provide support, follow-up, and protection to human rights defenders and journalists reporting on human rights violations / seeking justice around the world.
- c. ensure corporate accountability to create a level playing field for all companies to respect, monitor and do no harm (e.g. Sudan, Burma, Nigeria, internet restrictions etc.).

Conclusion: the new European External Action Service has a pivotal role to play in promoting the integration of foreign policies under the authority of High Representative Ashton, as well as all EU institutions in promoting the consistency between the EU's external and internal policies.

*Compiled by:*

*Lyal S. Sunga / Rome 1 September 2010*

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## **Synopses of the Workshop Discussions**

### **Workshop I: EU Instruments in the Fight Against the Death Penalty**

The moderator of this workshop, Mr. Marc Bossuyt, served as President of the Belgian Constitutional Court and he was formerly Special Rapporteur of the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities.

Mr. Bossuyt, who had played a major role in preparing the text of the draft optional protocol to the International Covenant on Civil and Political Rights (ICCPR) aiming at the abolition of the death penalty, recalled that this protocol was considered to be necessary since the ICCPR, Article 6 of which enshrines the right to life, did not prohibit the death penalty, but merely set out procedural safeguards to be followed in all death penalty cases. The Optional Protocol served two main purposes in his opinion. On the one hand, it committed State Parties to abolish the death penalty and never to reintroduce it. On the other hand, it reminded retentionist States that abolition was preferable from the point of view of better human rights protection. Like the 6<sup>th</sup> Protocol to the European Convention on Human Rights, the Optional Protocol to the ICCPR allowed State Parties to use the death penalty in time of war. In contrast, the 13<sup>th</sup> Protocol to the European Convention prohibits the death penalty under all circumstances. Mr Bossuyt emphasized that the main aim of the workshop was to identify what more could be done in the framework of the EU to advance the abolition of the death penalty around the world. Mr. Bossuyt's introductory comments to Workshop 1 were followed by a number of presentations, which are summarized below.

Mr Timans, Head of the Human Rights Unit of the European Commission's Directorate for External Relations, gave an overview of existing EU human rights instruments, in particular, those relevant to the fight against the death penalty, and he highlighted the possible impact of the Lisbon Treaty on the application of these instruments. The abolition of the death penalty counts among the main objectives of the EU which has maintained a consistently strong and principled position on the issue. In fact, all EU Member States have abolished the death penalty and its abolition remains a pre-condition for entry into the EU. The EU, as a leading institutional actor and lead donor in the fight against the death penalty, continues to call for global abolition, possibly with the establishment of a moratorium as a first step. In any case, the EU insists that whenever the death penalty continues to be used, that it should at least be carried out according to international human rights standards.

Bilateral diplomacy, action in multilateral fora, and cooperation assistance, figure as important avenues through which the EU addresses and aims to achieve the global abolition of the death penalty. Mr Timans indicated that the Lisbon Treaty would provide opportunities, but also challenges, as regards use of these tools, as for all EU human rights tools in general. He further recalled that the EU Guidelines on the Death Penalty, adopted in 1998, were the first human rights guidelines adopted by the Council of the EU. They constitute clear expression of the priority that the EU attaches to the fight against the death penalty, and the guidelines support the framework for diplomatic EU action in that respect. The *raison d'être* of EU human rights guidelines in general are to ensure the coherence and consistency of the EU human rights policy and to provide EU representatives around the world with tools to help them advance it. They foresee EU action at the global, regional and local levels.

The entry into force of the Lisbon Treaty and subsequent creation of the European External Action Service make the drafting of human rights guidelines all the more relevant. In the post-Lisbon Treaty setting, the tasks of the rotating presidencies will progressively be taken over by EU Delegations. This evolution promises to streamline and reinforce EU foreign policy, which will no longer depend on the respective preferences of each Presidency, and to ensure greater policy coherence over the longer term. A possible drawback however could be that all EU human rights policies will have to be addressed simultaneously, which could necessitate prioritization in addressing human rights concerns to ensure they are dealt with in the most coherent and sustainable manner possible.

Another significant policy and resource challenge is the requirement that more attention should be paid to the particularities of each country setting. Mr Timans endorsed High Representative Ashton's statement that human rights, albeit universal, could not be efficiently protected through a "one size fits all" approach.

Mr Timans stressed that the potential of the new Lisbon setup had to be maximised. The European External Action Service promises to strengthen the EU ability to speak with one voice. It should also give the EU an opportunity to better coordinate action with regard to various EU instruments. Consistency in action among various EU institutions, for example, between programs and projects funded by the European Commission's EIDHR on the one hand, and EU policy and multilateral efforts on the other, will likely remain of utmost importance and could partly condition the effectiveness of future EU diplomacy. Diplomatic tools include declarations and statements, formulated either in international fora or with regard to third countries, in individual cases, or when a country's death penalty policies may be under review. These tools will be concentrated in the High Representative's hands and the efficiency with which they will be used depends upon the gathering and analysis of reliable information by all EU Delegations and embassies abroad.

Mr Timans highlighted the essential role of the continued commitment of Member States at the UN level as well as in their bilateral relations with third countries. He also expressed his confidence that Member States' involvement in human rights related issues would remain unaltered, human rights being at the core of European identity and values.

Finally, Mr Timans stressed the decisive role of civil society in developing public debate and accountability throughout the abolitionist process, through the mobilisation of expertise and dissemination of knowledge. The EIDHR, providing funds to abolitionist movements worldwide, offers just one illustration of the partnership between the EU and civil society.

Mr Timans concluded that the EU would continue using all its available tools of diplomacy and cooperative assistance to work towards the abolition of the death penalty. He underlined that the key was to use the Lisbon Treaty's full potential. In this connection, attention should be given to increasing the role of EU Delegations, and the better use of human rights tools as well as continued political commitment to human rights from both the EU and its Member States.

Mr. Yorke, a Professor at Birmingham City University, recalled that the EU Parliament considered for the first time the abolition of the death penalty to be within EU competence in 1979. Since then,

EU resolutions and statements had proliferated. Some were aimed internally to encourage Member States to sign the 6<sup>th</sup> Protocol to the European Convention on Human Rights. Others were more of a symbolic character. This long-established symbiosis between the internal and international approaches has become all the more important in the EU after the Lisbon Treaty's entry into force.

Prior to the adoption of the Lisbon Treaty, the Treaty of Amsterdam provided for the removal of the death penalty in all EU Member States. The EU's European Charter of Fundamental Rights reiterated this obligation in the year 2000. The EU also adopted hybrid internal policies such as the 1998 and 2008 EU Guidelines on the Death Penalty, the 2005 Council regulation concerning trade in certain goods that could be used for the death penalty, torture or other cruel, inhuman or degrading treatment or punishment, and the 2007 Council decision to declare a European Day Against the Death Penalty.

Following the entry into force of the Lisbon Treaty, the removal of the death penalty within the EU was guaranteed by the EU Charter on Fundamental Rights through its introduction into EU primary law as well as by the establishment of the Office of the High Representative and its mandate. As for the campaign to abolish the death penalty around the world, the EU regularly involves the UN General Assembly. For example in 2007 and 2008, the EU took the lead in the adoption of General Assembly resolutions calling for retentionist countries to adopt death penalty moratoria. Recent debates in the European Parliament (such as on Libya and South Korea among other countries), bilateral and multilateral cooperation (with the UN, African Union and OSCE for instance), joint EU-US policies (*amicus curiae* briefs and non-extradition cases) as well as general and specific démarches, have also contributed to the EU's work towards global abolition.

Mr Yorke's presentation then focussed on three main elements: the important role to be played by the High Representative, the relationship between the Council of Europe and the EU, and the issue of funding.

Mr Yorke recalled that under Article 188 of the Lisbon Treaty, the High Representative shall be in charge of establishing all appropriate forms of cooperation with the UN, the Council of Europe and the OSCE. It was therefore imperative that he or she received the most up-to-date information on the death penalty in all countries. Mr Yorke suggested that this could be facilitated through collaborative efforts with NGOs and academics - and the development of a PhD community - constantly feeding information into the Office of the High Representative which would enable the Office to react more quickly on this issue.

While commending NGOs for their excellent understanding of the situation on the ground, Mr. Yorke insisted that academics should also become more involved in order to contribute theoretical nuances to the exercise of data gathering. Forming a PhD community, attached to and jointly supervised by both NGOs and universities, would help promote better understanding of country situations with regard to the death penalty. More specifically, Mr. Yorke recommended that the EU develop a fund for PhD scholarships on the issue of the death penalty to help keep track of the situation in all the remaining retentionist countries. This would enhance the work begun by the British Institute of International and Comparative Law's project on the abolition of the death penalty in Commonwealth Africa. A clear lacuna in Africa (perhaps with the exception of South Africa and

Nigeria) and Asia concerned the availability of data on the death penalty and on individual cases in particular. The PhD community could contribute to filling this void. The creation of an international database could likewise be helpful to this end.

Mr Yorke underlined that in the application of the EU external strategy against the death penalty, civil society was crucial for gathering information wherever appropriate or needed in respect of individual cases. Defence lawyers could often better identify death penalty cases where there was a strong EU presence and they could respond by filing an *amicus curiae* brief or arranging the presence of an EU representative to witness the proceedings.

Mr Yorke went on to highlight the risk of possible inconsistencies between the Council of Europe and the EU. For example, it was not clear whether Article 6(2) of the Lisbon Treaty providing for the EU's accession to the European Convention on Human Rights also applied to the Protocols to the ECHR. If it did not, then the current text of Article 2(1) of the ECHR, which *prima facie* allowed for the death penalty, could be applied, but the higher human rights standard provided under Article 2 of the EU Charter which establishes the right to life and prohibits the death penalty, should be applied as the guiding standard. This approach to interpretation would fall more closely in line with Protocol 13 to the European Convention on Human Rights.

Another example of possible inconsistencies is evident in the 2010 EU Parliament debates on South Korea and Libya. Whereas during the discussions on Protocol 13, no member of the Council of Europe Parliamentary Assembly proposed the use of the death penalty for any crimes, some members of the European Parliament recently contended that the death penalty might be an appropriate punishment for the worst crimes. According to Mr Yorke, this illustrates that not all EU Parliamentarians are aware of the failure of the death penalty as an appropriate punishment for the perceived "worst of the worst". Mr Yorke inferred the need to view the abolition of the death penalty as part of an ongoing educative and political project, within the Stockholm Programme's education on criminal law, human rights and dialogue with civil society. He further suggested that it might prove beneficial if the EU Guidelines were to include a policy statement acknowledging the need for continued education within the EU on the inefficacy of the death penalty, and on the death penalty as a violation of human rights.

Mr Yorke then raised the question of the possible conditionality of humanitarian aid to retentionist countries. He observed that it may be appropriate for the Union to consider whether the furtherance of the abolitionist agenda could be best served by making it a pre-requisite for donation that States seeking aid have abolished the death penalty or initiated an immediate moratorium as a first step towards abolition.

In her presentation, Ms. Tagusari of the Center for Prisoners Rights, Japan, observed that although Japan had not executed anyone since the latest major political change a year ago, this did not amount to a *de facto* moratorium. While Justice Minister Keiko Chiba had not signed any execution orders, neither had she initiated a public debate she had promised nor had she taken any other action which could be considered as a moratorium. Ms Tagusari expressed her concern that the Government, which had lost considerable public support over the last few months (the Democratic Party failed to

secure a majority in the latest Upper House elections and Justice Minister Chiba lost her seat), might be tempted to revive executions as a way to show the government is tough on crime.

Ms Tagusari referred to the results of a recent opinion poll released by the Cabinet Office. Over 85% people considered that, "in some cases, the death penalty cannot be avoided". This approval of the use of the death penalty, which was not to be interpreted as active support, rose 4 points from the previous survey conducted in 2004. Among the supporters of the death penalty, 54% considered that it was needed in order to "satisfy the feeling of the victims" (emotional response), and 51 %, misunderstanding the notion of deterrence, believed that the abolition of the death penalty would lead to an increase in violent crime. The majority of supporters considered that the death penalty should never be abolished, but 34 % said that abolition could be envisaged if circumstances were to change. Ms Tagusari highlighted the paradox that, whereas the already comparatively low number of crimes was continuously declining in Japan, the number of executions kept increasing. The rise in executions in turned fuelled the common erroneous belief that heinous crimes were increasing. Besides these misunderstandings and misconceptions, Ms Tagusari also deplored the secrecy surrounding the administration of criminal justice in death penalty cases.

Ms Tagusari went on to highlight two points which the EU ought to bear in mind when trying to define an effective approach to the question of the abolition of the death penalty in Japan.

First, Japanese politicians and legal professionals lacked basic knowledge about the national crime situation, penal policy and crime control. Basic education about the Japanese crime situation and penal system, the aim and effect of punishment, and the realities surrounding the use of the death penalty and imprisonment was urgently needed. This was all the more true in the context of the recent introduction of a lay judge system in Japan, which allowed ordinary citizens to participate in presiding over criminal cases. Government and civil society should raise awareness about the potentialities of rehabilitation programs and the importance of respecting the human dignity of offenders. Those elements combined, Ms Tagusari argued, could contribute to changing the behaviour of offenders, no matter how serious were the crimes they committed, rather than to exclude and isolate them from society. Acceptance of the idea that criminals could be rehabilitated ultimately forbids the execution of anyone. Ms Tagusari indicated that the Centre for Prisoners Rights together with other NGOs were to launch a multi-disciplinary commission responsible for recommending an alternative model for a more effective, more tolerant, and less severe justice system. Examples of good practices showing how EU Member States effectively controlled criminality without the death penalty could be offered. Ms Tagusari noted that the EU Death Penalty Task Force in Japan had extended its focus and now addressed all related human rights issues in the country. This positive development should enable the EU, making use of all relevant EU instruments and guidelines, to propose a more humane approach to offenders.

Second, and as called for in the EU Guidelines, it was crucial that offenders be approached as individuals and as persons who were not provided with the necessary resources and support and whose rights might be violated in the existing penal system. According to Ms Tagusari, the death penalty in Japan was not carried out in line with international minimum standards. Specifically, this concerned: the execution of persons who have become insane; the application of fair trial safeguards;

the mandatory appeal system; pardon or commutation; and execution methods which inflicted unnecessary suffering on the prisoner.

Ms Tagusari concluded with some proposals to enhance the EU's impact on the death penalty situation in Japan. She identified political leaders, especially within the Ministry of Justice and Parliament (Diet) as priority targets for EU action. Under the new system, the Minister of Justice should have the possibility to refuse to sign an execution order. Within the Parliament, some constituencies were available which aimed to abolish the death penalty in general or was interested to oppose the use of the death penalty in individual cases. Cooperation with the extended EU Task Force could play a crucial role. Parliamentary seminars, such as those successfully organised by the Council of Europe in 2002, could be used effectively. In particular, the presence of the EU President or High Representative could significantly influence Japanese political leaders, as well as the media, and could possibly pave the way to regular constructive dialogue between the EU Delegation and the Government on the death penalty in Japan.

Mr Dieter, of the Death Penalty Information Center, USA, first summarised some of the actions the EU has taken to oppose the death penalty in the United States, before he described some of the latest developments in the use of the death penalty in the country.

The EU has played an active role in the US through a wide variety of avenues. Occasionally, the EU called for clemency in individual cases following consultations with defence lawyers, especially where the fairness of the process was questionable. The EU also intervened in the legal process and challenged death penalty cases where new evidence supporting a finding of 'not guilty' became available. Foreign nationals sentenced to death in the US received particular attention from the EU, notably, through EC-funded legal intervention projects that enabled lawyers and law students from the sentenced person's country to be sent to the US to work on the issue. Mr Dieter observed that, in cases where EU intervention began early on in the process, with the support of EU funded programs, the death penalty was generally avoided.

In addition, the EU additionally filed *amicus curiae* briefs in a number of death penalty cases that reached the US Supreme Court and assisted with legal challenges where international law and opinion might have had a bearing on the case. If filed in due time, such briefs had proven successful, for example, with regard to challenges to planned executions of mentally disabled persons and juvenile offenders, both of which were eventually banned in the US. EU Member States have consistently refused to extradite individuals to the US if they faced a risk of being sentenced to death. The constant diplomatic, political and popular opposition in the EU to the US policy on the death penalty has also occasionally deprived the US of European support on certain security related issues. Mr Dieter went on to stress the importance of the EU's direct financial assistance to US-based human rights organisations working on death penalty issues. Work against the death penalty in the US had matured into a full-fledged campaign that encompassed research and opinion polling as well as educational efforts and reform. Mr Dieter considered the EU contributions to projects conducted in the US as essential to the steady decline in the use of the death penalty.

He also recalled that the US at one point had in place a ten-year moratorium on the use of the death penalty which ended in 1977. Over the next 20 years, the number of executions had then



consistently increased. Since the late 1990s however, the number of death sentences has dropped. One factor explaining the decline was the increased use of DNA evidence which produced an increased number of exonerations from death row. Mr Dieter however stressed the dramatic significant rise of the death penalty at the federal level which was supported during the George W. Bush Administration. Although the Obama Administration had not stopped the use of the death penalty, Mr Dieter expressed the hope that it would decrease, just as it had earlier.

Mr Dieter concluded with the observation that the overall trend saw death penalty cases decrease and its use continue only in the more isolated southern parts of the US. Moreover, the death penalty was outlawed in certain circumstances, in particular: where the offender was mentally incompetent (2002); a juvenile (2005); or where the crime committed did not qualify as 'murder' (2008). According to Mr Dieter, those elements hopefully hinted at the future absolute abolition of the death penalty in the US.

The moderator of the workshop, Mr Marc Bossuyt, welcomed those developments and he underlined that should the EU and US eventually unite on the issue, EU advocacy internationally could only become stronger. Retentionist States would no longer be in a position to cite US policy as an example to justify their continued use of the death penalty.

Ms. Jaber, of Penal Reform International, first presented the situation in the Middle East and North Africa (MENA) before proposing ways to optimise the use of EU instruments to support the fight against the death penalty.

Djibouti was the only Arab country to have abolished the death penalty. Algeria, Morocco, Tunisia and Jordan had a *de facto* moratorium on the death penalty. Saudi Arabia and Iraq were among the top five countries with the highest execution rates in the world. Ms. Jaber highlighted that Moroccan and Yemeni legislation listed over 300 crimes punishable by the death penalty, most of which could not be considered as serious crimes in other countries. In recent years, national, regional and international civil society organisations have been working in the MENA region towards the abolition of the death penalty, but Ms Jaber expressed her disappointment that, in spite of these efforts, the abolition of the death penalty still remained a taboo topic of political discussion. Fighting against the death penalty posed a serious challenge in a region where human rights defenders frequently faced death threats in the course of their abolitionist campaigns. An argument often invoked by people and governments, and which needed to be addressed, was that the death penalty complied with Sharia law. Several Islamic scholars have already challenged this belief, pointing in particular to the fact that a number of crimes punishable by the death penalty were never introduced by Sharia law, such as drug-related offences.

Ms Jaber went on to suggest ways to deepen cooperation between NGOs and the EU in the promotion of human rights. She commended the EU for the unity among its Member States. Cooperation with the EU could come in the form of financial support and also in the form of an EU-MENA partnership. Ms Jaber called for a better use of EU current resources and instruments, in a more strategic and consultative way. The EU should give its political support to human rights defenders and in all individual cases where EU guidelines were being violated. The political support of the High Representative and the President of the European Council could be particularly

influential since both were mandated to speak on behalf of all EU Member States. Good practices should also be encouraged through supporting States who had taken the steps towards adopting a moratorium, and highlighting the EU's experience in adopting mainstreaming human rights. A reassessment of the EU support and aid policy to countries that violated human rights and maintained the death penalty, especially for ordinary crimes, should be conducted.

Ms Jaber further suggested that the commitment of States to abolish or adopt a moratorium on the death penalty could form a prerequisite to EU development aid and trade agreements in general. The EU should maintain and develop its financial support to relevant NGOs and human rights defenders. The EU should ensure coherence between its human rights political commitments and the way it allocated funding to implement these commitments as well as between its institutions. Local needs and situations needed to be regularly reassessed through continuous, systematic and strategic consultation with NGOs. Ms Jaber also called for the provision of technical support by the EU to regional bodies and NGOs by means of sharing its own knowledge and experience in the promotion and protection of human rights as well as its Member States' good practices. The EU should support UN work and make full use of the platform provided by international fora and UN human rights treaty body mechanisms to remind States of their human rights obligations. The EU should also actively encourage third countries to ratify the Second Optional Protocol to the ICCPR. Finally, no one should ever be extradited, expelled or removed from the EU to a country where the death penalty was still being used.

In the ensuing discussion, a participant depicted the situation in Kazakhstan where, despite a 2003 moratorium, executions were still being carried out. The participant however foresaw the gradual fading out of the death penalty in the country, noting that the Constitution had been amended in 2007 to limit the use of the death penalty only to punish terrorist acts and exceptionally grave crimes committed during wartime. Kazakhstan faced two key problems: the lack of independence of judges and ombudsmen who were all appointed by the President; and the lack of actual reforms, following the ratifications of international instruments. Pressure from the international community, through visits of UN Special Rapporteurs, EU officials or high-ranking EU Member States officials, could positively impact the situation in the country.

One of the participants presented the work of the Murder Victims' Families for Human Rights (MVFHR), an international NGO of family members of both murder victims and executed persons, all of whom supported the absolute abolition of the death penalty. The MVFHR analysed the death penalty as an abuse of power, a violation of the right to life, and of the prohibition of torture and inhumane and degrading treatment and punishment. For the purpose of fostering a climate where the death penalty could eventually be abolished, concerns of the population must be addressed through education. Moreover, it was important to combat misconceptions that the death penalty could help prevent prison overcrowding and contribute to saving tax payers' money. According to the MVFHR, families of the executed should be recognized as victims of abuse and therefore were entitled to be protected under the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Another participant applauded the awareness-raising work undertaken by the MVFHR. She elaborated on the situation in Kyrgyzstan. The death penalty had been abolished in the country but

work still had to be carried out to improve prison conditions which currently failed to comply with international minimum standards. Regarding prison conditions, another participant observed that they could, in some countries, amount to torture or cruel, inhumane or degrading treatment. The EU should therefore encourage States to ratify the Optional Protocol to the Convention Against Torture.

Another intervener stressed the importance of public diplomacy and the Lisbon Treaty's potential in that connection, in that it aimed to help the EU speak with one voice. He then asked Mr. Dieter to assess the efficiency of EU public diplomacy efforts on NGO work on the ground in the USA and to propose ways to improve it. Mr Dieter responded that EU diplomatic missions in the USA could be effective, but should in any case show respect and cultural sensitivity. Informal discussions, in peer-to-peer settings, appeared to be more productive than open, public confrontations between diplomats and therefore such informal discussions were preferable. More generally, cultural sensitivity should be introduced in all EU action towards third countries. The EU must be better informed and more receptive to each country's situation (including social and economic conditions).

A Russian-speaking participant deplored that language too often posed a barrier for NGOs willing to work with the EU, and encouraged the EU to develop more Russian-speaking projects. Another participant suggested that region-specific recommendations should be formulated and taken into account by the EU. The crucial role and expertise of NGOs was again recalled, civil society organisations being most capable of assessing country situations and needs on the ground.

Other participants argued that EU-NGO cooperation should be reciprocal. It was essential that NGOs which contributed information and expertise to the work of the EU were provided with feedback from the EU so that they could appropriately define their work priorities. Moreover, NGOs should acquire a better understanding of EU procedures. The participants also encouraged the publication of an EU handbook or the setting up a focal point within the EU to strengthen its work on the death penalty. Besides the importance of EU-NGO cooperation, the need for coherence and resource and information sharing, both among NGOs and among each NGO's various field offices, was also highlighted.

It was further proposed that the EU should form alliances with countries which were neighbours of retentionist States to encourage retentionist States to adopt a moratorium. Additionally, it was suggested that the EU should encourage companies which do business in retentionist countries to try to engage them in the fight against death penalty.

The EU was encouraged to provide judges and police in retentionist states with improved sentencing guidelines, to support public education campaigns and trainings for EU and national parliamentarians and decision-makers as well as for police and prosecutors, to promote more transparency of the justice systems in retentionist States, and to better cooperate with NGOs, international organisations and retentionist States. Concerning the secrecy surrounding the use of the death penalty, a participant insisted on the necessity not to neglect death penalty victims' survivors, for example, to provide the families of victims with information as to where their loved one was buried after the execution.

Responding to a participant who raised the question of the possible conditionality of EU humanitarian and development aid to retentionist countries, Mr Timans stressed that humanitarian aid provided by the EU was and should remain unconditional. Concerning development aid and conditionality, the question remained however unsolved because of a lack of consensus among EU Member States on the issue. Human rights should certainly be on the agenda, not necessarily as a precondition, but as part of the "assistance package" the EU could provide to developing countries. Participants agreed that the abolition of the death penalty should be pushed onto other policy agendas.

In relation to the alleged conflict between the abolition of the death penalty and Sharia law, Ms Jaber indicated that awareness-raising should be carried out in Arab countries, by local Islamic scholars and organisations, about the actual provisions of Sharia law on the issue. Under Sharia law, the use of the death penalty was narrowly restricted in terms of punishable crimes and applicable procedure. Importantly, under Sharia law, those exceptions to the prohibition of the death penalty could not be lawfully applied in dual legal systems, but only in countries where the legal system was exclusively based on Sharia law, a situation prevailing only in Saudi Arabia and Iran.

It was recalled that the EIDHR finances a number of projects, some of which were managed by local EU Delegations, including public awareness-raising campaigns. In Africa in particular, the EU covered a large number of projects in the field of justice and security sector reform. These projects provide opportunities for the EU to address the abolition of the death penalty. One participant stressed that the EU should not neglect working with countries that already have a moratorium to ensure they go further and eventually abolish the death penalty entirely. The EU could seek the signed commitment of those States to completely abolish the death penalty. The EU could also support the possibility for States to abolish the death penalty without having to amend their constitutions or organise a referendum. Concerning EU actions in individual cases, a participant noted that the EU should have the possibility to take actions in any individual case and not only in those cases where minimum standards were being violated. The EU Guidelines should be clarified in that sense.

## **Workshop II: The EU's Role for the Promotion and Protection of Economic, Social and Cultural Rights**

The Workshop was opened by the moderator, Mr. Charles-Michel Geurts, Deputy Head of the Human Rights Unit in the Directorate-General for External Relations of the European Commission. Mr Geurts considered that the integration of economic social and cultural rights in EU external human rights policy was a 'work in progress'. On the one hand, the EU benefited from a strong *acquis*. All EU Member States had ratified the International Covenant on Economic, Social and Cultural Rights (although a few had not yet ratified its Optional Protocol), as well as the European Social Charter, and had supported the 1993 Vienna Declaration and Programme of Action on Human Rights which reaffirmed the universality, indivisibility, interdependence and interrelatedness of all human rights. The European Charter of Fundamental Rights, now legally binding with the same force as the EU treaty, had a strong content on economic, social and cultural rights. The EU had made progress in bringing human rights or human rights-based approaches into trade or development policies and it continued to champion the human rights dimension of the Millennium Development

Goals (UNMDGs) for example in the UNMDGs high level meeting held in September 2010. Yet, the EU was often perceived as according higher priority to civil and political rights over economic, social and cultural rights in its foreign policy and it had not developed a comprehensive policy approach on the latter rights. In this regard, the recent EU statement of March 2010 on the right to water was a welcome step. There was still some discomfort, if not misconceptions, among EU human rights practitioners as to the real nature and scope of economic, social and cultural rights, their justiciability, the notion of their progressive realization, and the relation between individual and collective rights. The workshop was therefore a timely opportunity to focus on improving the understanding of economic, social and cultural rights and their intrinsic link to civil and political rights and to explore how better to use EU human rights external policy instruments to promote and protect economic, social and cultural rights.

Mr. Olivier de Schutter, the UN Special Rapporteur on the Right to Food, emphasized the significance of the EU's promotion of economic and social rights. He stressed that it was first and foremost a matter of credibility for the EU to impose on itself what it imposed on others. In exploring the various possibilities of how this could be done, Mr. de Schutter discussed in detail the EU's generalised system of preferences (GSP), and he argued that in the context of the accession process, the human rights impact assessment should be undertaken earlier on in the process.

Mr. de Schutter considered the accession of the EU to the Revised European Social Charter of the Council of Europe to be among the more important developments in improving economic and social rights. Mr. de Schutter identified three key developments: (i) jurisprudence of the European Court of Justice, which accorded considerable weight to social rights in the face of free market principles; (ii) the economic crisis from 1973 onwards which put pressure on the budgets of the welfare state; and (iii) successive EU enlargements which created greater diversity within the EU, but which brought additional pressure on the welfare State at national levels.

Exploring further the notion of the EU's founding principles whereby economic and social dimensions complemented and "completed" each other, Mr. de Schutter considered various theories as to how this could be achieved. In this regard, he expressed his preference for the EU to accede to the European Social Charter of the Council of Europe. The EU was the first international organisation to have acceded to an international human rights instrument - the UN Convention on the Rights of Persons with Disabilities, in November 2009. He viewed this as a possible precedent for further accessions. He considered that it could affirm and promote understanding of the indivisibility, interdependence and equal importance of all human rights through European Social Charter accession, which could help to balance economic and social rights with the civil and political rights enshrined in the European Convention on Human Rights. Such an approach would also offer the added benefit of clarifying the respective tasks of the EU and the Council of Europe, with the Council of Europe elaborating the standards and the EU affirming its commitment to the application of these standards through action at all levels.

As far as activities outside the EU are concerned Mr. de Schutter drew a distinction between the promotion of the Millennium Development Goals and the promotion of social and economic rights, which added value to the promotion of the Millennium Development Goals. Exploring in further depth the two tools that the EU had at its disposal for human rights promotion in other countries, Mr.

de Schutter offered a detailed explanation about how these mechanisms could operate. Since 1971, the EU has developed a generalized system of preferences which links trade and commerce policy with human rights promotion. Mr de Schutter emphasised that the EU must accept its extra-territorial obligations in the area of human rights and a minimum obligation to "do no harm" with regard to human rights in other countries. Mr. de Schutter explained that the GSP encompassed the three mechanisms of: (i) sanctions for systematic violations of human rights; (ii) the establishment of the GSP; and (iii) the "everything-but-arms" initiative. Sanction mechanisms consisted of withdrawing commercial advantages from developing countries if there were flagrant and systematic violations of human rights or workers' rights as set out in international instruments. These have been applied for example to Burma in 1997 and to Belarus in 2006.

The GSP Plus mechanism offered an incentive for developing countries to accede to the main International Labour Organisation conventions and core UN human rights conventions as well as those relating to protection of the environment or the illicit in traffic narcotic drugs. The system consisted of proposing tariff preferences to developing countries where they accepted EU monitoring on the basis of international standards. Preferential status was withdrawn from Sri Lanka in February 2010 for its recent violations of civil and political rights in the context of its counterinsurgency operations.

Mr de Schutter pointed out that in the area of human rights there were often standards on which a consensus existed but too few tools were available to ensure their consistent application, most notably as regards developing countries. He was therefore convinced that a link between trade and human rights was legitimate as long as this link could not be suspected of protectionism or discrimination and if its application were entirely transparent. That is why it was important to base the mechanism of Council Regulation 732/2008 on international standards and not on standards unilaterally imposed by the EU. Pointing to other tools available for promoting human rights, Mr. de Schutter recommended that the EU should systematically develop impact assessments on human rights with regard to its association agreements, free trade agreements and cooperation agreements with developing countries. These impact assessments should be different from the sustainability impact assessments which the Commission currently asks experts to carry out when negotiations of an agreement are under way. These impact assessments were to be specific in their methodology, with an independent evaluation of the impact, conducted by persons with expertise in human rights, and in a such a way that affected persons and groups, vulnerable groups in particular, were fully consulted. Impact assessments, Mr. Schutter suggested, should also be founded on human rights as set out in international human rights instruments. Mr. de Schutter recommended that impact assessments be done at a stage where the content of the agreement was clear enough to permit an evaluation of the impact, but not too late when the negotiations were already too advanced. The overriding objective of an impact assessment should be to ensure transparency and facilitate field work.

Finally, Mr. de Schutter called for greater consistency and coherence across the different directorates. Drawing on his past experience with the Right to Food project, he argued that the Human Rights Unit could not avoid working with other directorates (e.g. trade, agriculture, etc.). In order to properly identify and assess the human rights impact on foreign activities of the EU, he argued, it was imperative that these directorates cooperate with one another.

Drawing on his first hand experience as the Head of Operations of the EU Delegation to Guatemala, Mr. Pedro Henriques discussed the EU's promotion economic, social and cultural rights. He first set out the historical context in Guatemala, referring to the 36-year civil war that ended in 1996. He also pointed out Guatemala's current relatively strong economic situation, explaining that this was due to a very strict approach to public finance and macroeconomic policy. Despite strong economic growth, Guatemala had slipped down on the UNDP's Development Index ranking from 118 to 122. He considered that the lack of resources available for State expenditure accounted for persistent inequality in Guatemala. Strikingly, only 2% of the population owned some 80% of the arable land and 50% of children under 5 years of age suffered from chronic malnutrition. Mr. Henriques recounted how he had met 14 and 15 year old girls in the western part of the country who had four or five children.

As regards human rights and security in Guatemala, Mr. Henriques pointed out that Guatemala had one of the highest homicide rates in the world. He identified two main reasons for this: first, that illegal, armed groups which had survived the civil war continued to carry out murders; and second, a prevailing climate of impunity that encouraged crime. Mr. Henriques pointed out that there was a strong correlation between areas with particularly high homicide rates and those with a high presence of arms, suggesting that high homicide rates were not necessarily linked only to areas with higher rates of poverty. He also noted the generally very high level of violence (increasingly also against women and children) and organised crime which had even infiltrated various State institutions.

The vast majority (98%) of crimes went virtually unsolved. In the light of this, in 2006, the Government of Guatemala and the UN entered into an agreement for the establishment of the International Commission against Impunity in Guatemala (CICIG). The Commission commenced its work in 2007 with an initial mandate that ran for two years and it was extended for a further two years. It was due to operate until September 2011.

The CICIG's role has been to act as a link among the Attorney General's Office, the police and other government agencies. Mr. Henriques explained that CICIG's mandate covered the investigation, prosecution, and dismantling of criminal organisations operating in Guatemala. CICIG also takes part in criminal proceedings, provides technical assistance and promotes legislative reforms. Mr. Henriques reported that the CICIG receives widespread support from civil society and could be considered a "success story". He then turned his attention to human rights defenders in Guatemala and underlined the UN's active role on this matter. He drew on various statistics that indicated a growing trend of attacks against human rights defenders (189 attacks in the first six months of 2010). The response to these attacks was threefold: the Ministry of the Interior established a multi-institutional body, the Body for the Analysis of Attacks against Human Rights Defenders, vested with responsibility for identifying threats and responding to attacks against human rights defenders, but this had not proven successful. At the level of civil society, a Protection Units for Human Rights Defenders / UDEFEGUA was established. This body was charged with monitoring the situation of human rights defenders throughout the country and reporting every 2 months on follow up and investigation. Thirdly, at EU level, the creation of the "Filter Group" - a local EU mechanism responsible for implementing the EU Guidelines for Human Rights Defenders by examining cases of threats and attacks against human rights defenders, had proven to be very

effective. Mr Henriques considered that the Filter Group system qualified as a 'best practice' that could also be applied to other regions. The Filter Group consists of representatives from EU Member States, the EU Delegation and (recently) the Office of the United Nations High Commissioner for Human Rights. Mr. Henriques explained how the Filter Group system worked: once a case report was received, a decision was taken as to how best to respond. Responses could take the form of direct contact with the individual concerned, the issuance of official public statements, and contacts and representations with government officials.

As for the EU's current engagement in Guatemala, Mr. Henriques suggested that the many working groups, various programmes and projects, ought to be pulled together, with a view to encouraging the participation of civil society. There should be greater emphasis on strengthening the civil society component and there should be greater financial assistance on food security issues as well as on justice and human security in general. In conclusion, Mr Henriques concluded that the key to success in Guatemala might lie in developing a more coherent and better focussed civil society component of EU cooperation.

In the discussions that followed, a number of participants reflected on whether the EU could do more to help counter the argument often raised in developing countries that human rights were basically western in origin and concept rather than universal as claimed. Perhaps the EU could also help to clarify cultural and linguistic misinterpretations about the meaning and application of human rights instruments that had sometimes arisen.

Asked whether increased trade with Guatemala could by itself help to improve human rights in the country, Mr. Henriques said that even if Guatemala were to adopt a radical free-market, export-oriented economic policy, only a small minority of people in the country would benefit. He also pointed out that in reality often those few who benefit the most exert a disproportionately large amount of influence in the country. Moreover, introduction of greater freedom in the market could worsen inequality as land became ever more concentrated in fewer hands.

The discussion then focussed on the Association of Southeast Asian Nations (ASEAN) new human rights mechanism and whether it would likely prove effective or not in relation to such difficult situations as that prevailing in Myanmar. A number of participants also cited the difficult position of students in Malaysia being barred from political activity. It was suggested that the EU could perhaps use more of its leverage in relation to trade links with Malaysia to bring the Government around to a more progressive attitude with regard to the enjoyment of economic, social and cultural rights.

There was also discussion of the use of indicators to gauge the enjoyment of economic, social and cultural rights in India. A participant indicated that: 450 million of India's 1.2 billion inhabitants lived below the poverty line; 46% of children in India were malnourished; the national poverty rate amounted to 37.2% of the total population; and 131 million Indians remained landless. He drew attention to a variety of development projects that had been initiated where the EU played a major role, for example, with regard to the establishment of special economic zones. It was important to note however, said one participant, that certain development policies had a strong detrimental effect on vulnerable groups, particularly on indigenous populations.



The discussion also addressed the importance of integrating key human rights considerations, such as participation, non-discrimination, transparency and accountability, in policy dialogue with third countries, for example, in Guatemala, where the EU has been the leading donor on food security.

Mr. de Schutter agreed with the scenario of the phenomenon of macro-economically successful, developing countries that failed to provide their citizens with economic, social and cultural rights on an equitable basis. This showed that the mantra of "development" very often did not actually benefit the poor (who made up the majority of the population), and even sometimes worsened their plight. With regard to land reform, Mr. de Schutter observed that the new demand for energy-related crops at the same time as there was increasing pressure to attain food security would result in an inevitable collision of interests. With upward economic growth, the pressures on land were likely to grow even more in future. Those who lived in poverty often did not have any sort of occupiers' rights or protection from eviction. He therefore called for an obligation upon all private actors to exercise greater due diligence to ensure that their conduct complied with a high ethical standard. Mr. Henriques added to Mr. Schutter's remarks, stating that it was quite reasonable to expect global companies to be aware of general risks of violations of economic, social and cultural rights through their actions. Assurances by host governments should not be seen as sufficient.

In his presentation, Mr. Luis Perez, Secretary-General of the Copenhagen Initiative for Central America and Mexico and of the International Federation of Leagues for Human Rights (FIDH), explored the state of economic and social rights in Central and South America and he highlighted the serious local situation for human rights defenders, referring to the recent assassination of a human rights defender in Guatemala who had fought to bring Guatemala into closer compliance with European standards. Mr. Perez also recounted cases of other recent assassinations of human rights defenders by paramilitary troops in Colombia as well as threats against and killings of indigenous people.

Mr Perez juxtaposed global progress in human rights, exemplified by the UN and regional human rights frameworks on the one hand with the continued violation of human rights throughout the world on the other hand. He underlined the problem of impunity for war crimes and crimes against humanity as well as with regard to ecological crimes. Mr. Perez considered that a solution to the problem of impunity might be to establish some sort of 'international economic court' with a mandate to battle impunity and defend the values of democracy.

Citing the threats of globalisation to human rights, namely political violence, organised crime, and terrorist organisations, Mr. Perez pointed out the necessity to balance economic interests and human rights. According to Mr. Perez' practical experience, such incoherence frequently arose in South America. Finally, Mr. Perez offered a number of specific recommendations to help strengthen social and economic rights, reiterated his proposal to establish an international economic court and he urged that the EU should impose severe sanctions on governments which committed serious human rights violations.

Mr. Denis Haveaux, UNAIDS Liaison Officer to the EU, drew from his experience to explain the available instruments and mechanisms that can be used by the EU to respond to the challenge of HIV/AIDS. He also discussed issues relating to HIV-related restrictions on entry, stay and travel.

He reminded the forum that there was no evidence that such restrictions were capable of meeting any of their objectives and he contended that they in fact merely created a false sense of security. Finally, Mr. Haveaux presented some interesting statistics: HIV-prevalence among African prisoners for instance was four to five times higher than that of the rest of the population. In Russia 40% of those injecting drugs were HIV-positive.

The discussion that followed centred on situations where economic development could harm the equal enjoyment of economic, social and cultural rights. To avoid this problem, it was important that economic decision-making was preceded with thorough consultations of people at the grassroots level. A participant from the Ukraine outlined the effect of the collapse of the Soviet Union on the enjoyment of social and economic rights in post-Soviet countries. In the Soviet Union, education, housing, and health care had been almost free of charge. This situation changed dramatically at the beginning of the 1990s when the Soviet Union collapsed and economic markets emerged. The participant regarded large funding from donors, such as the EU and its members States, as detrimental to human rights promotion and protection in the aftermath of the Soviet Union because in the post-Soviet countries capitalism was too unregulated. According to the participant, the role to be taken by the EU in promoting social and economic rights would require conditionality in funding according to whether or not there had been sufficient progress in promoting human rights and in combatting corruption.

On the subject of EU double standards, one participant highlighted the urgent need for corporate social responsibility to shift towards real business accountability. The recommendation was also made that there should be more thorough consideration of existing best practices for example of the Discrimination Charter developed in Denmark. The rest of the discussions explored the impact of trade on economic, social and cultural rights, the EU's 'no harm policy', the need for impact assessments, that trade incentive scheme agreements should include human rights conditions, the importance of effective monitoring of human rights, and the importance of dialogue and development assistance referring to universal human rights standards. There was also an exchange of views on the importance of encouraging a high level of involvement by ambassadors, ensuring sufficient level of resources, training and exchange of best practices among EU Delegations, and introducing a system that would allow EU Delegations and Member States' embassies to monitor and report on the behaviour of EU companies. Furthermore, it was recommended that all existing available tools, such as the UN Human Rights Council's Universal Periodic Review (UPR), should be taken fully into account and civil society should be kept fully informed and consulted.

### **Workshop III - The EU's Relations with Regional Human Rights Mechanisms**

The Workshop was opened by the moderator, Mr. Michel Tilemans, Human Rights Director at the Belgian Ministry of Foreign Affairs. In order to set the general framework for discussion, Mr. Tilemans highlighted some of the main changes introduced by the Treaty of Lisbon. In particular, he emphasized that the Treaty brought together formerly separate competencies and areas of action under the responsibility of the EU High Representative for Foreign Affairs and Security Policy (HRFASP) and the Vice-President of the European Commission (EC). The High Representative will be assisted by the European External Action Service (EEAS), to be composed of officials from the

European Commission, members of the General Secretariat of the Council, and diplomats and agents from the EU Member States.

Mr. Tilemans placed great emphasis on the added value brought by such institutional innovations and, speaking in his capacity as Human Rights Director at the Belgian Ministry of Foreign Affairs, he argued that the EU should develop strong ties with regional organizations and human rights mechanisms. He recalled that Belgium was the initiator of the resolution on regional arrangements within the UN General Assembly (UNGA), with a view to encouraging and supporting regional cooperation. He also called on the EU Member States to continue to pay great attention to the multilateral aspects of human rights issues, including within the Third Committee of the General Assembly and the UN Human Rights Council. He further noted that, following the adoption of the resolution introduced by Belgium, a focal point on regional human rights mechanisms was appointed in 2009 within the Office of the UN High Commissioner for Human Rights (OHCHR). He also mentioned the recent OHCHR international workshop on 'Enhancing cooperation between regional and international mechanisms for the promotion and protection of human rights' (held in Geneva in May 2010) - as well as other joint activities, declarations and reports - as prime examples of the increasing formalization of the cooperation between regional organizations. Within this framework, he expressed the hope that the Workshop would serve as an opportunity to put forward concrete recommendations on ways to improve and strengthen cooperation between regional organizations in the field of human rights.

Before giving the floor to the representatives of the regional human rights mechanisms, the Moderator summarised some of the key achievements of such mechanisms, including:

- ❑ the crucial role played by the Council of Europe (CoE) in consolidating human rights in Europe, and the key importance of the EU's accession to the European Convention on Human Rights (ECHR) with a view to fostering an even greater coordination between the CoE and the Union;
- ❑ the continuing efforts of the Organization for Security and Cooperation in Europe (OSCE) with which the EU - he contended - envisaged an even closer partnership in the advancement of human rights;
- ❑ the regular dialogue engaged in by the EU and the African Union since 2008, as well as the parallel annual civil society seminar organized since 2009, each aimed at fostering a common understanding of human rights;
- ❑ the establishment, in July 2009, of an Association of Southeast Asia Nations (ASEAN) Intergovernmental Commission on Human Rights (AICHR), which is the first organization of this kind in the Asia-Pacific region; and
- ❑ the envisaged establishment of an Independent Permanent Commission on Human Rights within the Organization of the Islamic Conference (OIC), which opens new opportunities for cooperation.

Finally, Mr. Tilemans highlighted some of the main questions to be dealt with by the Workshop participants:

- ❑ with the entry into force of the Treaty of Lisbon, should the EU develop a more ambitious human rights policy to address all regional organizations with which it has been cooperating?
- ❑ in what ways could civil society organizations contribute to this process?
- ❑ how should the EU cooperate more closely with existing regional organizations?
- ❑ which themes and approaches do participants consider could add value to the better promotion and protection of human rights in this connection?
- ❑ how could the EU assist ASEAN's new Intergovernmental Commission on Human Rights, particularly in light of the importance the EU attaches to the role of civil society organizations?
- ❑ in what ways could the EU, in partnership with civil society organizations, help strengthen the African Commission on Human and Peoples' Rights, and the African Court of Human and Peoples' Rights? How could the EU draw from the experience and lessons learned of the Inter-American Commission on Human Rights?
- ❑ what role should the EU play with regard to the new Organization of the Islamic Conference Independent Permanent Commission on Human Rights that is planned to be established in the future?

Ms. Snjezana Bokulic, Head of the Human Rights Department of OSCE / ODHIR, began her presentation by recalling the universal and indivisible nature of human rights, while emphasizing the importance of adopting concrete solutions for their implementation at local and domestic levels. She recalled that the OSCE - along with EU and the CoE - form part of the European human rights regional framework, which is often described as the most advanced regional system in the world. Within this system, the CoE traditionally set the general legal framework by developing regional human rights standards. The EU has the political, financial and legal means to facilitate the implementation of such standards. The OSCE provides a forum for discussion, as well as the political framework, operational capacity and field presences to react immediately and effectively whenever a crisis might break out in the OSCE area.

Ms. Bokulic further described two levels at which the interplay between the EU and other regional organizations often occur:

- ❑ the EU can be a formal partner organization of other regional organizations;
- ❑ the EU shares some Member States with other regional organizations.

The cooperation between the OSCE and the EU falls under the latter category, as all EU Member States are also participating States to the OSCE. This results, according to Ms. Bokulic, in the two organizations sharing values and approaches when it comes to implementation of human rights. This in turn leads to greater consistency and coherence in their human rights policies. Such coherence is well illustrated by a number of EU-OSCE joint human rights activities, statements, and reports.

As Ms. Bokulic noted however, the practical implementation of the human rights policies of the two organizations is not without its challenges. In particular, both organizations have faced accusations of 'double standards' with reference to the dichotomy between their internal and external human rights policies, which could lead to a weakening of their leverage. She highlighted the use of

conditionality within the EU's accession policy as a telling example in this respect - expressing nonetheless her confidence that the Treaty of Lisbon would mark significant progress toward filling this gap in internal / external coherence.

By way of conclusion, Ms. Bokulic put forward a number of recommendations. In particular, she suggested that:

- ❑ the EU and its individual Member States should provide continuing political support (both strategically and on a case-by-case basis) to actions of the OSCE / ODIHR, particularly in situations of crisis and human rights violations;
- ❑ any discrepancies in the two organizations' external / internal human rights policies should be avoided, as they would undermine their credibility;
- ❑ closer cooperation between the EU and the OSCE / ODIHR should be achieved, especially on specific or thematic areas. The two organizations should be ready to share information and to engage in a common consultative effort, with a view to ensuring the more consistent and effective implementation of human rights standards;
- ❑ specific human rights expertise should be ensured in EU's delegations worldwide;
- ❑ the EU Guidelines on Human Rights Defenders are a valuable tool to defend human rights advocates in OSCE regions and therefore they should be implemented throughout EU Delegations, and shared with the international community as a whole.

After summarizing the CoE's main competencies and tasks, Mr. Humbert de Biolley, Representative of the Council of Europe and Deputy Director of the CoE Brussels Office, pointed out that the relations between the CoE and the EU were, from the outset, very close and complex for two main reasons:

- ❑ all EU Member States have always been members of the CoE. This has necessarily strengthened the relationship between the two organizations, which has further developed after the entry into force of the Treaty of Lisbon;
- ❑ over the years, the EU has undergone significant expansion, both geographically and in terms of competencies, *inter alia* in the domains of human rights, democracy, and the rule of law. This has posed increasing challenges with regard to the coherence of the EU's action in these areas, as well as to the efficient implementation of its human rights standards throughout the continent.

As the EU and the CoE deal to a large extent with the same issues, several initiatives for mutual consultation have been set up in order to avoid double standards and to ensure a coherent approach of the two organizations to human rights issues. Mr. de Biolley recalled, for instance, that the EU was invited to participate in the legislative process in Strasbourg, as well as in the works of each CoE Committee engaged in drafting a new legal instrument.

Mr. de Biolley also noted that most of the CoE's conventions adopted since 2005 (e.g. on trafficking, sexual exploitation of children, counterfeit medicines) opened up a path for accession by the EU, with a view to ensuring legislative coherence at the regional level. Similarly, whenever the EU updated its Guidelines on issues over which the CoE also has competence, it shared views and

expertise with the CoE, in order to guarantee that the relevant amendments remain at least compatible with the CoE's legislative standards.

Mr. de Biolley mentioned specific priority areas in which the two regional organizations regularly cooperated, including terrorism, trafficking in human beings, and the protection of minors. Furthermore, the EU and the CoE also seek to adopt a common approach *vis-à-vis* certain countries. In particular, regular exchanges took place with regard to the human rights situation in candidate or neighbouring countries within the framework of the EU's enlargement and neighbourhood policies. Finally, the CoE's Joint Assistance Programmes aimed at specific countries or regions have been planned, implemented and followed-up in close contact with the EU.

He also noted that CoE's cooperation with the EU has been given new impetus since 2007, when the two organizations signed a Memorandum of Understanding (MoU) in which they recognized each other's contribution to the respect for human rights, as well as the CoE's role as 'the Europe-wide reference source for human rights'. In Mr. de Biolley's view, the election of Thorbjorn Jagland as the new CoE Secretary-General in November 2009 also contributed to strengthening ties between the CoE and EU, as Mr. Jagland has made cooperation with the Union (also through regular meetings with the Presidents of the European Council and the EC, the HRFASP, and EC Commissioners) one of his main priorities.

Turning to the developments introduced by the Treaty of Lisbon, Mr. de Biolley emphasized that the CoE views the Treaty as an opportunity to enhance the efficiency of, and the coherence between, the internal and external dimensions of the EU's human rights policy, as well as a means to foster further cooperation between the CoE and the Union. He also welcomed the entry into force of the European Charter of Fundamental Rights as a legally binding instrument, observing that the Charter upholds a number of achievements which had been codified already in the ECHR, for example, in the domains of bioethics and data protection.

Finally, the issue of the EU's accession to the ECHR (as envisaged in the Treaty of Lisbon) was addressed. Mr. de Biolley pointed out that the Union's accession to the ECHR represented a major step towards its integration into a consolidated regional mechanism for the protection of human rights, bearing legal and political consequences. Indeed, by adhering to the ECHR, the EU places itself at the same level of scrutiny by the European Court of Human Rights (ECtHR) as any other Member States of the CoE, thus acknowledging the ECtHR's supervisory role on the respect of human rights. He also quoted a resolution of the European Parliament (EP) of 19 May 2010 which noted that accession by the EU to the ECHR 'constitutes an essential first step which should subsequently be complemented by accession by the Union' to other CoE conventions and bodies, in order to achieve legislative harmonisation in the field of human rights at the regional level. Mr. de Biolley concluded by advocating greater strategic initiatives aimed at the harmonious development of a common system of human rights protection in Europe, and he expressed his commitment on behalf of the CoE to do whatever was necessary to facilitate the EU's accession to the ECHR.

Mr. Haris Azhar, of Solidarity for Asian People's Advocacy (SAPA) Task Force on ASEAN and Human Rights, highlighted from the outset the normative value of his presentation, which mainly

revolved around one key question: in light of the new Article 21 of the Treaty of Lisbon (which sets forth the guiding principles of the Union's action on the international scene), what kind of support could the EU provide to the ASEAN Intergovernmental Commission on Human Rights (AICHR), i.e. the new human rights mechanism established within the ASEAN?

Mr. Azhar started by tracing the origins of the AICHR. While acknowledging the unique nature of such a mechanism, Mr. Azhar noted nonetheless that the Terms of Reference for the AICHR retained only a few of the inputs provided by civil society organizations.

Turning to the situation of human rights at the national level, Mr. Azhar conceded that some progress had been made, including through the establishment of national human rights institutions (e.g. in Malaysia, Philippines, and Thailand), and the ratification of human rights instruments (e.g. all ASEAN Member States had ratified the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination Against Women). However, Mr. Azhar pointed out that the human rights situation remained critical in many countries. He mentioned, for instance, the deterioration of human rights conditions in Burma and Cambodia, the deprivation of civil liberties in Thailand, extrajudicial killings and enforced disappearances in the Philippines as well as the lack of justice for past abuses in Indonesia. Particularly vulnerable categories include religious groups, human rights defenders, migrant workers, women, children, and indigenous people.

With reference to the mandate and functioning of the AICHR, Mr. Azhar raised a number of critical issues, including:

- ❑ the limited number of formal and informal meetings held by the Commission since its establishment in July 2009;
- ❑ the absence of rules of procedure, and the consequent impossibility for the Commission to receive complaints and liaise with victims and civil society organizations;
- ❑ the lack of adequate information (including through a dedicated website) on the work of the Commission;
- ❑ the lack of AICHR's response *vis-à-vis* human rights crises, e.g. in Thailand;
- ❑ the difficulties in implementing the AICHR's protection mandate (e.g. by obtaining information from ASEAN Member States on promotion and protection of human rights, and submitting annual reports on its activities to meetings of the ASEAN Ministers of Foreign Affairs), due to the lack of structured links with the political authorities; and
- ❑ the limitations posed by the principles of non-interference in the internal affairs of ASEAN Member States and decision-making by consensus (as reiterated in the ASEAN Charter), as well as by the complex political situation in Southeast Asia.

In light of the above, Mr. Azhar proposed the following recommendations:

- ❑ knowledge transfer and experience sharing among regional human rights mechanisms (with an emphasis on the EU and ASEAN), governments and civil society organizations should be encouraged;
- ❑ monitoring human rights in Southeast Asia should form an integral part of a strong EU foreign policy;
- ❑ regional and national foreign policies should place major emphasis on peoples' and victims' rights;
- ❑ the EU's public statements following bilateral meetings with third countries' governments should also take into account concerns raised with the Union by local civil society organizations;
- ❑ the EU should establish regular dialogue with civil society organizations in Southeast Asia, leading to periodical joint reports on the human rights situation in the region;
- ❑ human rights should be mainstreamed into all aspects of EU-ASEAN relations;
- ❑ the rights of women, children, indigenous people, and migrant workers in Southeast Asia should deserve special consideration;
- ❑ capacity building and adequate funding should be provided with a view to the effective functioning of the AICHR (e.g. through the convening of regular meetings and the establishment of a dedicated Secretariat);
- ❑ information on AICHR and its mandate should be widely disseminated, in order to encourage both individuals and civil society organizations to resort to its services.

Ms. Ariela Peralta, Deputy Director of El Centro por la Justicia y el Derecho Internacional / Centre for Justice and Interational Law - CEJIL, provided insight into the Inter-American human rights system which is regarded by many as one of the most advanced regional human rights mechanisms in the world. In particular, Ms. Peralta provided a detailed and comprehensive analysis of the history, mandates and internal procedures of the two bodies underpinning the system of human rights protection within the Organization of the American States (OAS), namely the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

Some peculiarities of the Inter-American system, especially as compared to the European system of human rights protection, were emphasized, such as the possibility for the Inter-American Commission to conduct thematic hearings (at the request of both States and individual petitioners) and *in situ* visits, and to publish special reports on specific countries and issues. The Inter-American Court's power to adopt specific precautionary measures - even before a claim was lodged with the Court - was also highlighted.

Ms. Peralta also recalled some of the Inter-American Court's main jurisprudential achievements, for instance with regard to the responsibility of States for acts or omissions of its agents or organs, as well as for acts of non-state actors committed with the State's complacency, tolerance or permission (e.g. paramilitary groups in Colombia).

Finally, Ms. Peralta focused on the unique variety of reparation measures provided for in the Inter-American system, commending the Inter-American Court for its proactive imagination in conceiving



effective remedies for the victims, including, *inter alia*, the obligation for the convicted State to provide scholarships and / or psychological assistance to victims and their families, to hold public remembrance ceremonies, to build monuments and memorials, to overturn amnesty laws, to reopen investigations and to prosecute alleged perpetrators.

Despite the advanced and sophisticated nature of the Inter-American human rights system, some challenges facing the OAS human rights mechanism were highlighted. In particular, Ms. Peralta regretted the limited financial support provided to both the Commission and the Court by OAS Member States (only 5% of the total funding), as well as the high costs of accessing the Inter-American system. Ensuring compliance with the Court's judgments was also a major issue she identified.

With respect to the Inter-American interaction with other regional human rights systems, Mr. Peralta called for effective communication strategies, for more regular exchanges of experience at different levels (e.g. grassroots, advocacy, litigation), as well as for greater formalization in relations between international and regional human rights systems, and among the latter. Based on past exchange attempts between the OAS and the African Union (AU), she pointed out that such formalised cooperation could prove to be a difficult and costly process (e.g. in terms of translations, etc.), which thus required the necessary resources.

During the discussion generated by the Workshop presentations, a number of issues were raised.

First, several participants called on the EU to ensure a more effective and institutionalised participation of civil society organizations and human rights defenders in its dialogues with third countries. In particular, it was observed that whenever civil society organizations were not recognized by their own governments, closer association to EU bilateral meetings would contribute to strengthening their credibility and to enhancing their protection and advocacy capacity at the national level.

Second, concerns were expressed as to possible overlaps between the European Court of Justice and ECtHR's jurisdiction, particularly following the EU's accession to the ECHR as set forth in the Treaty of Lisbon. According to the representative of CoE however, this risk was mitigated by the rule of exhaustion of domestic remedies, which underlies the ECHR human rights system. In fact, under such a system, before alleged human rights violations committed by the EU could be brought before the ECtHR, internal mechanisms, namely the European Court of Justice, will need to be exhausted. Therefore, in the near future, it may well happen the European Court of Justice, in its capacity as the 'Supreme Court' of the EU, will actually have to deal with human rights cases that, in the past, would have been brought directly to Strasbourg. The issue of possible overlapping with the CoE was also raised with regard to the EU Agency for Fundamental Rights (FRA). Also in this case, the CoE representative pointed out that the FRA's mandate was carefully designed so as not to duplicate that of the CoE, and to promote the highest degree of cooperation and coordination between the two institutions.

Third, one participant wondered whether, in principle, the extraterritorial jurisdiction of the ECtHR could extend so as to encompass violations of human rights committed by non-CoE Member States.

After recalling that the ECHR was binding on all the parties thereto, regardless of where an alleged violation of human rights had been committed, the Representative of the CoE noted that the EU itself - despite adhering to the ECHR - was not a member of the CoE, and that the most recent CoE conventions (e.g. on terrorism, cybercrime, personal data, trafficking in human beings) were also open for accession by States that were not members to the CoE.

Fourth, several participants regretted the absence of precautionary measures within the European human rights system, emphasizing differences with the Inter-American system in this respect. It was noted that such a gap - as well as the lengthy procedures entailed by the exhaustion of local remedies principle - could seriously jeopardize the protection of human rights, e.g. of human rights defenders, in emergency situations. Neither the EU FRA, which has a limited mandate and no competence to carry out investigations, nor any other EU institutions seemed to offer effective solutions in this regard. As for the CoE system, the CoE representative highlighted that the ECtHR may indicate non-binding interim measures (e.g. in cases of possible extradition of detainees to countries applying torture or using the death penalty) even before all local remedies have been exhausted. Monitoring committees, such as the European Committee for the Prevention of Torture, could also address urgent situations and issue public statements. As far as the OSCE system was concerned, the representative OSCE / ODIHR acknowledged that existing mechanisms (collection of information through country missions, statements, recommendations) were not always effective, and that the OSCE / ODIHR's approach was mainly an unsystematic and sporadic one, as illustrated by its faint reaction to the Kyrgyz crisis.

Fifth, a civil society organization representative from Kyrgyzstan drew attention to the dramatic situation in the country following the events of April and June 2010. She described murders, summary executions, ethnic violence, imprisonment of human rights defenders, burning of buildings, and systematic violations of children's and women's rights in the southern part of the country. She then called on the EU and the OSCE to help local civil society organizations defend human rights in Kyrgyzstan, as well as to provide the necessary aid to address the economic and social difficulties facing the country. The representative of OSCE / ODIHR acknowledged that the response of the Organization to the Kyrgyz crisis had been inadequate thus far, absent any formal requests for intervention by participating States and internal mechanisms. The Workshop moderator recognized that the Union's reaction was also one of puzzlement and indecision. He also recalled that the EC provided financial assistance to human rights NGOs, and invited the participant from Kyrgyzstan to contact both the EU Delegation in Bishkek and the EC representative to the Workshop.

Finally, several participants stressed the difficulties in ensuring compliance with decisions of regional human rights mechanisms, especially when such decisions were not legally binding. The lack of political will was identified as one of the major obstacles to the effective implementation of judgements, resolutions and individual communications of regional human rights bodies. The representative from the Centre for Justice and International Law (CEJIL) noted that, within the Inter-American system, States' reluctance to have a case brought before the Inter-American Court had proven to be a key incentive for complying with the Inter-American Commission's resolutions. Within the EU framework, the Workshop moderator mentioned the daily penalty payments imposed by the European Court of Justice on defaulting Member States as a possible deterrent to non-compliance with its judgments.

## Workshop IV: Lisbon and the EU's Internal-External Consistency

Ms. Véronique de Keyser, acting as moderator, welcomed the participants and introduced herself as a Belgian member of the European Parliament (EP), sitting on the Sub-Commission on Human Rights (DROI). She considered that the European Parliament was progressively reckoning with the entry into force of the Lisbon Treaty and its implications including the EP's role in the EU human rights policy framework. Concerning the challenge to enhance the consistency of EU human rights policy, she mentioned two examples:

- ❑ Human Rights and International Trade Policy: the European Parliament was asked to give its opinion on trade policies or bilateral talks with Colombia on which the European Parliament had received reports of the murder of five trade unionists. The European Parliament should bear in mind human rights considerations when entering into trade agreements with third countries. As such, the European Parliament must avoid double standards as the European Parliament, since the entry into force of the Lisbon Treaty, now had an enhanced capacity to look at international trade policies in the light of human rights issues.
- ❑ Election Observation: in the Sudan, the European Parliament recently took part in election observations which raised in particular the question as to how the EU should ensure adequate follow-up in its EU policy and programs for the Sudan in the light of the results of the European Parliament election observatory mission.

Ms. Karen Moeskoeps of Amnesty International (AI) stated that AI had long called for greater consistency and internal-external coherence in EU policy. It welcomed the inclusion of this issue on the Forum's agenda. Whereas the EU was a promoter of human rights outside Europe, this did not necessarily translate into automatic respect of human rights inside the EU. Violations of human rights within the EU undermined the EU's credibility as a whole and of EU Member States individually. If the EU wanted to maintain leadership on human rights issues globally, its policies had to display greater coherence and it had to fully implement human rights guarantees internally. Three aspects were particularly relevant to this challenge:

- ❑ there were many recently documented cases of violations of human rights occurring within the EU's 27 Member States that involved xenophobia, discrimination, violations of the human rights of asylum seekers, migrants and minority groups, including Roma peoples. Although there were grounds for optimism due to institutional changes at EU level brought about by the Lisbon Treaty, there were also grounds for concern.
- ❑ Europe had sufficient human rights instruments at its disposal. However, it would be valuable if EU institutions and Member States were to focus together much more on current human rights issues. A political dialogue and mechanisms to address internal human rights issues should be set up to monitor human rights in a more systematic way. In future, it was expected that EU and its Member States will have to face a higher level of "justiciability" in regard to their commitments on human rights through the European Court of Justice or other procedures. However, the Council had not set up any permanent and formal mechanism to address internal

human rights affairs, which constituted an important gap. As for its external human rights policy, the European Council could work through its Working Party on Human Rights (COHOM). As regards the promotion and protection of human rights internally, such a body was now permanently established at the Council level. It could then coordinate with COHOM to work more on internal-external policy coherence.

- ❑ Enhance external impact by ensuring proper internal policy: recent criticisms expressed by some countries towards the EU in international fora (i.e. UN Human Rights Council) showed that the EU is still unable to provide a formal institutional and community-based response. The EU has no institutional mechanisms to indicate to third countries that the EU as a community "is aware of such human rights problem and will address it". By not having the institutional capacity to respond to such criticisms, the EU risks losing credibility in the promotion of human rights work and programs in the world.

Ms. Ilze Brands Kehris, Chairperson of the Management Board of the Fundamental Rights Agency (FRA), confirmed that external partners often called upon the EU to react to human rights violations within the EU. Acceding or candidate countries also regularly raised the issue of double standards applied by the EU, especially in connection with the EU's accession policy. On the one hand, there were high expectations for acceding countries as regards their human rights records. On the other hand, there was a lack of consistency from the EU Member States on human rights issues in their own territories. Important steps to increase the EU's accountability towards human rights in Europe were under way, such as recognition of the binding nature of the Charter of Fundamental Rights, accession to the UN Convention on Persons with Disabilities and to the European Convention on Human Rights and Fundamental Freedoms, and the strengthening of other mechanisms for improving implementation.

Ms. Brands Kehris then highlighted collaboration among agencies such as the Council of Europe, the Fundamental Rights Agency and the EC and she also mentioned the inclusion of UN standards in FRA's daily work. Using UN standards was a way for the EU to assess gaps in its own normative and implementation frameworks. Some EU Member States were not a party to certain UN conventions such as the UN Convention on the Rights of Migrants or some protocols additional to certain other of the core multilateral human rights conventions. These were important gaps which undermined the EU's internal-external consistency. The speaker also mentioned the importance of the Council of Europe's human rights monitoring mechanisms (CoE).

Ms. Brands Kehris further underlined the importance for the FRA to produce reliable objective data as a basis for shaping EU policy. The FRA is an independent institution with a Management Board consisting of independent persons. The FRA's main mandate is to keep track of human rights situations at ground level. Some examples of how the FRA collaborates with others EU agencies (such as FRONTEX) or with civil society organizations to observe the reality at ground level, to collect data and to generate recommendations were discussed. FRA's role could also extend beyond the strict area of the 27 EU Member States and could touch on issues relevant also for the EU accession countries. As such, the FRA could also contribute to EU internal-external policy coherence. Ms. Brands Kehris concluded that the FRA would continue enhancing its dialogue with

civil society organizations and that there was currently being developed a 'Fundamental Rights Platform' to facilitate and regularize dialogue with civil society organizations.

Ms. Linnéa Arvidsson, of the Brussels-based European Regional Office of the UN High Commissioner on Human Rights, acknowledged that the EU had been ambitious in its human rights policy. On the EU's impact in external relations, she recalled the example of Albania which had adopted a new anti-discrimination law on the basis of EU anti-discrimination instruments. However, consistency was paramount by which to maintain the credibility of the EU's external policy relating to human rights, and in this regard, she encouraged EU Member States to employ UN standards as a means by which to improve internal-external coherence in EU human rights policy. She recalled that EU Member States were in any case generally parties to most of the core UN human rights conventions, except for the UN Convention on the Rights of Migrants and certain Optional Protocols.

The EU was encouraged to integrate UN standards as much as possible in shaping its policies. Though the EU Charter of Fundamental Rights was now into force, this should not replace references to UN standards. A very rich collection of jurisprudence, procedures, reports, general observations, guidelines etc. offered useful toolboxes which the EU should consider using. The future EU Strategy of the Rights of the Child was a good example where the EU could base its policy on UN standards and instruments. Equally, the UN Human Rights Council's Universal Periodic Review (UPR) was recalled as offering a new tool for enhancing EU external-internal policy consistency. The UPR process also channels fresh reports from UN human rights treaty bodies, Human Rights Council special procedures, States and civil society organization which will enhance new perspectives to enable better EU policy coherence. The UN Human Rights Council could play an important role in "bridging" gaps among "blocs" of countries. Ms. Arvidsson recalled that the EU sometimes did not apply what it preached externally. She concluded her presentation by recommending that:

- ❑ the EU should use as much as possible UN human rights standards as well as the full range of UN expertise in human rights to help shape EU human rights policy;
- ❑ the EU should use the Universal Periodic Review process as a means by which to enhance policy consistency; and
- ❑ bridging gaps in the UN Human Rights Council would also help the EU to strengthen its policy coherence.

Mr. Aurel Ciobanu-Dordea, Director of the European Commission's Fundamental Rights Unit, (DG JLS), recalled that the Lisbon Treaty and the Charter on Human Rights were bringing about important changes. Over the last decade, the EC had included more fundamental rights into some policies such as security, asylum and migration EU policy. This was also confirmed in a number of academic research articles and in statements from human rights NGOs. The entering into force of the Charter offered an opportunity better to calibrate EU policies and to involve all partners in legislative processes (Council, Member States and the European Parliament) with greater integration of human rights standards. The EC Communication on Fundamental Rights will be launched in autumn 2010. The EC will use the fundamental rights policy without going beyond the boundaries of the EU competencies in compliance with the Charter and the Lisbon Treaty. The EC Communication on Fundamental Rights will explain how the EC can further improve its internal

processes to comply better with the Charter and how the EC could further streamline its internal impact assessment processes. The Communication could also promote greater transparency in its internal human rights policy making processes. What happens once a proposal leaves the EC to the Council and the EC? Mr. Ciobanu-Dordea stressed that the EC should lobby, argue and demonstrate to the Council and the European Parliament that the proposal was a relevant one. Once a proposal became legislation, the EC should improve its monitoring capacity on the application of EU law by Member States. For example, the speaker recalled that Greece had been challenged by the European Court of Human Rights and national jurisdictions for not respecting the human rights guarantees associated with asylum procedures. Mr. Ciobanu-Dordea Another considered that maintaining a good level of policy debate between the EC and Member States was important and that the EC Communication on Fundamental Rights would hopefully enhance such dialogue. The EC's proposal to begin issuing annual human rights reports could also help to raise awareness on the status of human rights in Europe. The Annual Report will also be a means by which to monitor the situation on the ground and create common monitoring indicators.

In the ensuing debate, one participant reiterated that the EC had the power to tackle threats of impunity wherever a Member State violated human rights, such as the Italian Government's treatment of Roma people on numerous occasions. Another participant considered that Article 7 of the Lisbon Treaty was paramount for the credibility of the EU on human rights issues.

Ms. Brand Kehris explained that the FRA interacts with all EU institutions, including the Council. Data provided by FRA will serve as a basis for policy and legislation development. EU institutions could ask the FRA for advice and input on legislation, but this would be done only at the request of EU institutions, not on FRA's own initiative. The Stockholm Program also enabled the FRA to respond to requests from EU institutions.

Mr. Ciobanu-Dordea responded to a comment from the floor concerning the use of Article 7 of the Lisbon Treaty stating that the purpose of EC policy was to use Article 7 as objectively as possible. On the proposal that infringement could be discussed in the Council Working party, Mr. Ciobanu-Dordea stated that the issue of EU competency remained a sensitive issue and that the EC preferred other ways to tackle human rights issues other than to invoke Article 7.

A number of participants thought that the implementation of recommendations inserted in the adoption of the upcoming EC Communication on Fundamental Rights would depend upon the Presidencies' will. The JLS Council should raise key issues related to the Charter whenever this was needed. The EU as a whole, and the Council, have an interest in debating human rights issues. Finally, evaluation and peer review among Member States were mentioned as other key issues of the Stockholm program to create more consistency within EU human rights policy.

On the situation in Uzbekistan and Kyrgyzstan, the Moderator drew attention to the EU's dialogues with these countries, but indicated that the European Parliament and the EU did not have all the means at their disposal to change the situation.

Mr. Antoine Madelin, Permanent Representative of the Office of the International Federation for Human Rights (FIDH) to the EU in Brussels, argued that the EU could use a toolbox to enhance

internal-external human rights policy, but still show a deficit in policy coherence within its external policy. As examples, he mentioned the EU migration policy as a real challenge to enhancing coherence in connection with the EU "Return Directive". Considering that return of migrants to origin countries was the objective of that Directive, how could human rights be consistent with such a Directive? Member States could interpret the Directive as enabling them to return foreign unaccompanied minors to their origin countries despite a risk of human rights violation. Such Directive remained a very controversial issue in the European Parliament. Another example was that of the Government of China's reaction to the Tiananmen Square protests which was at odds with the EU's China policy dialogue. The EU had condemned the massacres but, 10 years after, the EU-China dialogue was developing apace despite the fact that human rights NGOs were still not permitted to work freely in China. On the one hand, there was an arms embargo to China, but on the other hand, European companies were providing software to the Chinese authorities to allow them to control access to the internet, which raised issues of participation in violating the right to freedom of information and of corporate social responsibility.

On the EU's trade policy, the speaker referred to the General Preferences System as a trade policy framework where inconsistency still arose. The example of Colombia, where trade unionists were under daily threat, showed that the EU should review its trade negotiations in the light of human rights standards. Also, the EU prohibitions on forced labour and child labour were not always being properly implemented. Mr. Madelin considered that COHOM and the Working Group on Fundamental Rights were two mechanisms that could work on how to include human rights standards in all EU policy. On the FRA, the speaker recalled that it should address all human rights-related policies of the EU, both internal and external. As such, the FRA's mandate should be enlarged in order to address external EU policy and related areas like security and anti-terrorism and EU trade policy. The European Parliament had to fully play its role of political body and not only as the "guardian" of human rights. As a last comment, Mr. Madelin recalled the very difficult situation of human rights defenders both outside and within Europe, including the financial situation of human rights defender organizations in Europe.

Mr. Geoffrey Harris, Head of the Secretariat of the DROI Committee in the European Parliament, was requested by the moderator to provide a synopsis of the European Parliament's perspective. He stressed the importance of the result-oriented approach of the European Parliament work on human rights and of impact assessments in the human rights field. Among his conclusions was the idea that all European Parliament human rights related work should be integrated into a single human rights committee which could tackle both internal and external human rights policies. DROI, as a sub-committee of the Foreign Affairs Committee was not in a position to address internal human rights issues. Secondly, the European Parliament had become aware of its new roles with Lisbon Treaty. The European Parliament was faced with a genuine dilemma on how far it should engage and how far it should resort to sanctions. He also underlined the importance of EC Commissioners Reding and Ashton working closely together to give a sense of improved internal-external coherence on human rights policy.

A number of participants referred to the human rights violations in Saudi Arabia, Kazakhstan and China, including infringement of the right to freedom of information, freedom of expression, right not to be tortured, and freedom of assembly. One participant insisted on the need for multi-party

democracy in China if the EU wanted to see full human rights promotion and protection in that country. Discussion also centred around the rights of children and the problem of the EC's action plans on Foreign Unaccompanied Minors, and against Trafficking and the use of child labour, all of which had many important internal-external dimensions.

There was also discussion on the role of women in human rights and social development in Africa. In dialogue with African countries, it was of utmost importance to take into account the cultural background of the societies with which the EU interacts. One speaker suggested that an adapted language be used to introduce greater cultural sensitivity because treaties, institutions and written instruments were too many and poorly adapted to African oral traditions. Civil society organizations were generally run by activists rather than intellectuals.

Another participant argued the human rights dialogues between the EU and partner countries should be public in order to promote transparency. There was discussion also of the problem of child migrants and the inconsistent use of terminology between 'minors' which referred to the domestic legal context and 'children' when referring to third country contexts.

Further debate continued on the issue of anti-discrimination law and policy that still needed improvement in EU policy. Albania had a concrete anti-discrimination law, whereas in Central Europe, human rights were generally mentioned only in association agreements. In partnership or association agreements with Central European countries, the EU should raise all human rights issues including those relating to sexual orientation and gender identity, not only the more traditionally accepted human rights issues.

The Moderator highlighted that many interventions had contended that the EU relied far too much on soft power which did not seem to have any real impact on human rights. In the light of the European Parliament work, the dilemma continued to be: partnership with a country in order to help support change within the country, or not signing agreements in order to isolate a country, possibly also with sanctions. The EU had a full range of mechanisms and agreements at its disposal but it did not use them adequately. The instruments were there but the blockages remained mainly political: do we sanction or do we continue working with a country? Another issue emphasized by participants was the need for the EU to promote corporate social responsibility more strongly, because in many countries, companies seemed to operate without any regard for human rights. Finally, how could the EU monitor or control the implementation of human rights commitments in the trade agreements with countries?





## **Mrs. Catherine Ashton, High Representative of the European Union for Foreign Affairs and Security Policy (video message transcript)**

I am delighted to be able to send this message to the annual EU-NGO Forum for Human Rights. I would like to send a particularly warm welcome to those who have travelled from outside the EU to be here. I'm sorry I'm not able to be with you in person today, as I am travelling myself. I would like to use this brief opportunity to say a couple of words about human rights. About why they matter and how we can work best to promote them.

As organisations and individuals active in the field, you demonstrate your commitment to human rights on a daily basis through the work you do. This is a commitment I fully share.

For the EU, human rights are at the core of our identity and they are at the heart of what we do around the world. Our own history of creating a basis for human rights, democracy and the rule of law across 27 Member States is a success story, and an experience that we are happy to share with others.

We have developed a strong set of mechanisms for promoting human rights in different contexts. For example, over the last eighteen months we have provided 235 million Euros in funding for 900 NGO projects in 100 countries - a number of whom are represented here today. This work is important and must continue.

The Lisbon Treaty offers us the opportunity for a more coherent, more consistent and more effective EU foreign policy, including our work on human rights. But the world is also changing outside the European Union. So we need to ask ourselves what we could do better.

While human rights are universal, a "one size fits all" approach does not work. This does not mean we should change the message on the importance of human rights. But we need to get smarter at how we deliver it. And we must judge our efforts by our outcomes.

To give you specific examples, I will continue to meet civil society actors and human rights defenders in Brussels and abroad, as I have done in China, in Gaza, in India and most recently in Brussels last week. And I expect colleagues in our network of EU delegations around the world to do the same.

Looking ahead, I want to see what more we can do to support the abolition of the death penalty world-wide, working bilaterally and through multilateral fora, beginning with the UN.

My aim is to have human rights, democracy and the rule of law running like a silver thread through everything that we do externally. The creation of the new European External Action Service will give effect to this.

We cannot do it all on our own. So we need to continue our partnership with civil society organisations, represented here today.

I look forward to the recommendations that come out of your discussions over the next two days. They will help us in revisiting our overall EU human rights strategy. I wish this Forum every success!

**Speech of Vice Prime Minister and Minister of Foreign Affairs of Belgium,  
Mr. Steven Vanackere**

**Opening Session 12<sup>th</sup> Annual EU-NGO Forum on  
Human Rights - Monday 12/07/2010, Brussels**

**(Only spoken word prevails)**

Honorable guests,

Dear participants and delegates,

Ladies and gentlemen,

“In the future, respect for Human Rights will increasingly be a universal criterion for designing ethical systems.” With these words of the Iranian-American Human Rights activist Mahnaz-Afkhami I bid you welcome to the Twelfth EU-NGO Forum on Human Rights. I am delighted that the annual dialogue session between the EU and a great number of international and national NGO representatives takes place in Brussels, the heart of Europe. Let it be a sign that the EU will listen, with open mind and full heart, to their recommendations and draw from their hands-on experiences.

I am impressed to see you came with so many, which is an honor for Belgium and must be a first good sign. I would also like to express my special appreciation to those who had a long journey getting here.

We are gathered here today, dear EU and NGO representatives, to help improve the way the European Union deals with Human Rights in both its internal and its external policies. This year, the central theme of the EU-NGO Forum will be “*the implementation of the EU Human Rights instruments under the Lisbon Treaty*”. An excellent choice, I believe.

Only a few months after the Lisbon Treaty has entered into force, civil society, EU institutions and Member State representatives are all present for this exercise, which will help strengthen the EU’s capacity to effectively promote Human Rights as an integral part of its policy framework.

With the entry to force of the Lisbon Treaty and the creation of the European External Action Service ahead, a wide range of new perspectives arise, which are meant to change the face and the means of the EU's external action efforts. At the same time, the EU and its Member States are engaged in a process of profound restructuring of their policy instruments, aimed at both incorporating the agenda of effective Human Rights promotion and improving cooperation, coherence and complementarity.

Hence, I invite you to explore the possible human rights implications the Lisbon reforms bring about with regard to the implementation of the EU instruments for Human Rights. For example: the seven EU guidelines on Human Rights, the EU Local Strategies and Dialogues on Human Rights, the consultation sessions with members of civil society, the EU interventions on individual cases or the various thematic demarches of the EU on Human Rights issues.

During this twelfth session we will critically assess the actual state of play for the EU's Human Rights policy and evaluate the effective and concrete application of its instruments in the field, including through the action of local diplomatic representations and EU delegations. Therefore, the Commission and Belgium have proposed to centre this valuable reflection on four carefully selected themes, which will be broached upon throughout the workshops. These are: (first) the EU instruments and the fight against the death penalty, (second) the EU's role in the promotion and protection of economic, social and cultural rights. The fight against the death penalty is a theme that lies at the heart of the EU's Human Rights approach. Also for Belgium in particular, it remains an absolute policy priority. Moreover, the consolidation of Europe's campaign for the abolition of the death penalty through the Lisbon Treaty creates interesting opportunities for the European External Action Service and the EU High Representative, Ms Catherine Ashton. Further, the second theme of social, economic and cultural rights deserves to be the subject of detailed discussion as it directly relates to the principle of the indivisibility of Human Rights, which points as well to our commercial and development cooperation policies, and to the worldwide struggle against poverty.

(Third) The EU's relations with regional organizations with regard to Human Rights, (and fourth) the consistency between the EU's internal and external policies. These last two themes will ensure a more horizontal approach to the upcoming discussions. In addition to that, both themes are of particular value in the context of the ever increasing multilateral decision

making world-wide and the need for the EU to develop sustainable relations with other regional institutions, including on Human Rights issues.

The focus on concrete sub-themes allows us to illustrate in a tangible way the direct implications of the Lisbon Treaty and the EU Human Rights instruments in these relevant domains. For the European Union has often been criticized with regard to the effective implementation of the EU Human Rights instruments. Our goal throughout these four workshops will be to draw operational conclusions from the discussions specifically related to each theme.

I would like to share some of my personal views on Human Rights and stress our collective responsibility in protecting and promoting them, not only in far away places, but also among ourselves.

Ladies and gentlemen, in times of global economic crisis, changing balances of power, and the ever-pressing climate challenge, *fear for worse* tends to result in security-driven policy responses and contorted reactions of governments. However, if we forget about our fundamental respect for human dignity and about our unique human potentialities, such short-term responses might turn out to be counterproductive. While states have to formulate socio-economic development policies, they also have to respect the principles of Human Rights, Good Governance, and the Rule of Law. Development, peace, security and Human Rights are tightly intertwined and mutually reinforcing.

Our care for human rights must stretch beyond words and major declarations, because Human Rights deserve more. They deserve more than diplomats and politicians paying them lip services. For great ideas need landing gear as well as wings. Our commitment must be translated into concrete action with a substantial impact on the lives of people. The instruments on Human Rights, which the EU and its Member States have already at their disposal, deserve to be used adequately.

An important thing that I would still like to note is that any plead for Human Rights will lose its credibility and its strength if we deal with it in a selective manner. Therefore, any country—even our economic or strategic partners – must be amenable for an open and constructive dialogue on Human Rights issues. No regional reflex can be used as an excuse.

This equally implies that we cannot be soft on ourselves either. We must not rest on our laurels. At all times, it is necessary to be on the alert for evolutions that stand for a backlash.

From time to time it is essential to carefully scrutinize our own behavior and have the courage to assess our weaknesses, to recognize our failures. I am fully aware that this is no easy task, but that doesn't make it less relevant. Moreover, I believe that if we keep this exercise in mind, we might be able to avoid the *arrogance trap* and strengthen the profile of the EU with regard to the promotion of universal Human Rights.

Today, it is my wish and my sincere hope that the substantial field-based recommendations of the delegates and representatives of all civil society organizations gathered here will contribute to a more realistic, coherent and effective application of our valuable European Human Rights instruments.

Dear delegates and members of civil society, your independent and impartial work remains of indispensable value for the political scene. You provide the political world with the feedback loop needed to ensure a vibrant and progressive European Human Rights policy. I am confident that these two-day long consultation sessions will succeed in bringing forth the needed practical focus and will help the EU in successfully carrying out its Human Rights policies.

The idea upon which Human Rights are founded is simple and clear. Let me express this with the words of the nineteenth century politician and orator Robert Ingersoll: "Give to every human being every right that you claim for yourself." Simple and clear, but also undeniable and demanding.

Let's use the extraordinary challenges that lay ahead for Europe as a motivation, let's move forward with renewed strength and meet those challenges, so new opportunities can arise.

You have my full support and I wish you all the best!

Thank you



# 12th EU-NGO Forum on Human Rights

Brussels, 12 & 13 July 2010

“EU Human Rights instruments and the Lisbon Treaty: State of play and way-forward”

## PROGRAM

### Monday 12th July - Palais d’Egmont

8:00 – 9:00 Registration of participants and coffee

9:00 – 10:30 Opening Plenary Session – Addresses by:

Mr. Steven Vanackere, Minister of Foreign Affairs of Belgium

Mrs. Catherine Ashton, High Representative of the European Union for Foreign Affairs and Security Policy (video message)

Mr. Koos Richelle, Director-General, DG EuropeAid, European Commission

Mrs. Heather Grabbe, Director Open Society Institute – Brussels, on behalf of the Human Rights and Democracy Network

Mrs. Irene Khan, International human rights expert

Moderator: Mr. Michel Tilemans, Human Rights Director, Belgian Ministry of Foreign Affairs

10:30 – 11:00 Coffee Break

### 11:00 – 13:00 Workshops

#### Workshop I: EU Instruments in the fight against the death penalty - *Bibliothèque room*

Speakers:

- Mr. Rolf Timans (Head of the Human Rights Unit, DG Relex, European Commission)
- Mrs. Tagusari (Center for Prisoners Rights – Japan)
- Mr. Richard Dieter (Death Penalty Information Center - USA)
- Mrs. Taghreed Jaber (Penal Reform International)
- Prof. Jon Yorke (Reader in law - Birmingham City University)

Moderator: Mr. Marc Bossuyt (President of the Belgian Constitutional Court)

#### Workshop II: EU’s role for the promotion and protection of economic, social and cultural rights - *Arenberg room*

Speakers:

- Mr. Olivier de Schutter (UN Special Rapporteur on the right to food)
- Mr. Pedro Henriques, Head of Operations at the EU Delegation to Guatemala
- Mr. Denis Haveaux (UNAIDS, Liaison Officer to the EU)
- Mr. Luis Perez (Copenhagen Initiative for Central America and Mexico)

Moderator: Mrs. Véronique Arnault (Director for Multilateral Relations and Human Rights, European Commission, DG Relex)

### Workshop III: The EU's relations with regional HR mechanisms - *Orange room*

Speakers:

- Mrs. Snjezana Bokulic (Head of the Human Rights Department - ODHIR)
- Mr. Humbert de Biolley (Representative of the Council of Europe)
- Mr. Haris Azhar (SAPA (Solidarity for Asian People's Advocacy) Task Force on ASEAN and Human Rights)
- Ms. Ariela Peralta (Deputy Director of El Centro por la Justicia y el Derecho Internacional - CEJIL)

Moderator: Mr. Michel Tilemans (Human Rights Director – Belgian Ministry of Foreign Affairs)

### Workshop IV: Lisbon and the EU's internal – external consistency - *Blue room*

Speakers:

- Mr. Aurel Ciobanu-Dordea (Director for Fundamental Rights, European Commission, DG JLS)
- Mrs. Karen Moeskops (Director Amnesty International Vlaanderen)
- Ms. Ilze Brands Kehris (Chairperson of the Fundamental Rights Agency Management Board)
- Mrs. Linnéa Arvidsson (Human Rights Officer - OHCHR Regional Office for Europe)
- Mr. Antoine Madelin (Permanent Representative to the EU - FIDH EU Office)

Moderator: Mrs. Véronique de Keyser (MEP, member of European Parliament Subcommittee on human rights)

13:00 – 15:00: **Seated lunch**

15:00 – 16:00 **Workshops**

16:00 – 16:30: **Coffee break**

16:30 – 17:30 **Workshops**

19:30 – 21:30: **Dinner at the Palais d'Egmont**

## Tuesday 13th July - Palais d'Egmont

09:00 -10:30: **Workshops: Summing up and drafting recommendations**

10:30 – 11:00: **Coffee break**

11:00 – 12:00: **2nd Plenary session: Presentation of the workshops conclusions and recommendations**

12:00 – 13:00: **Closing statements:**

Mr. Jan Luyckx, Director of the Cabinet of the Belgian Minister for Development Cooperation  
Mr. Christian Leffler, Deputy Director-general, DG Development, European Commission  
Mrs. Heidi Hautala, Chair of the European Parliament Subcommittee on human rights  
Mr. Dismas Kitenge, President of the Groupe Lotus (DRC) and vicepresident of FIDH

Moderator: Mr. Michel Tilemans, Human Rights Director – Belgian Ministry of Foreign Affairs

13:00 – 14:30: **Lunch**

**12th Annual EU-NGO Forum on Human Rights  
European Union Human Rights Instruments and the  
Lisbon Treaty: State of Play and Way Forward  
Brussels, Belgium, 12-13 July 2010**

**General Background Paper  
on the Forum's Theme**

*The views expressed in this Background Paper are those of the expert consultant only  
and do not necessarily reflect those of the European Union or its Member States.*

*Prepared by:*

Lyal S. Sunga, June 2010

Visiting Professor

Raoul Wallenberg Institute of Human Rights and Humanitarian Law

Lund, Sweden



**12th Annual EU-NGO Forum on Human Rights  
EU Human Rights Instruments and the Lisbon Treaty:  
State of Play and Way Forward, Brussels, Belgium, 12-13 July 2010**

**Objective of the Forum**

In a nutshell, the Forum aims to facilitate civil society consultation with a view to improving the design and implementation of European Union external policy in the field of human rights in line with the European Commission May 2001 Communication on the EU's role in promoting human rights and democratisation in third countries. The EU emphasises the essential role civil society organizations can and should play in this process and recognizes the importance of maintaining comprehensive dialogue with civil society. The corresponding Council Conclusions of June 2001 register the Council's endorsement of and commitment to this approach. The Forum provides a high profile platform for interactive discussion among representatives of civil society organisations, the EU institutions (the European Commission, Council and Parliament), and Member States, thereby helping to strengthen future EU strategy and policy making, as well as the development and implementation of EU programs and projects. Civil society is afforded an enhanced opportunity to contribute to EU policy development and at the same time the EU can better draw upon civil society experience and reflect upon lessons learned. This forum is financed by the European Instrument for Democracy and Human Rights (EIDHR) which is the main financial instrument by which the EU integrates the promotion of democracy and human rights into its external policy.

**Theme of the Forum**

The Treaty of Lisbon is a major landmark in the EU's institutional development and it brings about a number of important and positive changes with regard to the formation and implementation of EU human rights policy. The 12<sup>th</sup> Annual EU-NGO Human Rights Forum comes at an opportune time, only a few months after the Treaty's entry into force, to explore the possible human rights implications brought about by the Treaty, in particular, with regard to EU policy priorities and new human rights challenges and prospects. The aim of this background paper is therefore to outline:

- the main purpose of the Lisbon Treaty;
- the main institutional changes introduced by the Treaty into the EU's structure including the advent of new solidarity mechanisms;
- the importance of the Treaty's recognition of the EU Charter of Fundamental Rights as part of EU law;
- the Treaty's provisions relating to human rights; and
- some of the new challenges and prospects as regards EU human rights policy making and implementation.

**The Main Purpose of the Lisbon Treaty**

The Treaty is the product of negotiations among EU Member States at an intergovernmental conference that involved the European Commission and Parliament. With the Lisbon Treaty's adoption on 13 December 2007, it was incumbent upon each of the EU's 27 members to ratify it in line with their own ratification procedures and constitutional frameworks. Each of the EU's 27 members ratified the Lisbon Treaty, and in accordance with its Article 6, the Treaty duly entered into force on 1 December 2009.

The Treaty of Lisbon clarifies the scope of the EU's action and means and methods for addressing the many economic, social and political issues that arise in a rapidly changing world, such as new challenges from the effects of globalisation, demographic shifts, climate change, the need for access to safe and clean energy supplies, and threats to security. In order to realise its full potential and to meet these and other challenges, the Lisbon Treaty introduces a number of reforms to modernise the EU, and to accommodate needs that have arisen from the EU's expanded membership from 15 to 27 members as well as to keep pace with growth in the EU's responsibilities and range of activities.

### **Major Institutional Changes brought about by the Lisbon Treaty**

The Lisbon Treaty introduces a number of important changes to the EU's structure, raising the issue as to how human rights will become integrated within it.

First, a new permanent position of the President of the European Council was established during a meeting of EU Heads of State and Government on 19 November 2009 to provide greater continuity and stability to the Council's work. European Council Members elected Herman Van Rompuy to serve in this capacity from 1 December 2009 until 31 May 2012 - a period of two and a half years.

Second, the Lisbon Treaty establishes a High Representative of the Union for Foreign Affairs and Security Policy who also holds the post of Vice-President of the Commission, and chairs the External Relations Council. Ms. Catherine Ashton was appointed to this post. The aim is to simplify EU representation in foreign relations and the EU's capacity to speak with one voice, while enhancing coherence among the various policies pertaining to EU external action, from diplomatic démarches to military deployment to bilateral assistance in third countries. This cross-appointment promotes coherence in the EU's external action by conferring upon one person two major fields of responsibility and helps to raise the EU's profile globally. The High Representative / Vice-President will soon receive the support of a new joint service called the 'European External Action Service' (EEAS), composed of officials drawn from the Council, Commission and the diplomatic services of Member States.

Third, the Lisbon Treaty introduces a new European Citizens' Initiative that allows citizens to submit any appropriate proposal on any matter which they consider requires the adoption of a legal act by the Union with a view to implementing the Treaty itself. Furthermore, the Treaty increases the range of policy areas which require approval of EU legislation from the directly elected European Parliament, together with the Council comprised of national Ministers - a 'co-decision' procedure.

Finally, the Treaty enhances the role of national parliaments by involving them more closely in the work of the Union, and giving them the opportunity to consider whether proposals under consideration by the European Parliament and the Council of Ministers have taken sufficient account of the principle of 'subsidiarity' whereby the EU should take action only where such action cannot be taken as effectively at the national, regional or local level and it concerns an issue common to the Union. This enhanced role will help ensure that EU decisions match the needs of citizens as closely as possible in all Member States.

### **Recognition of the EU Charter on Fundamental Rights as Binding EU Law**

In Article 6(1) of the Lisbon Treaty, EU Member States recognize the Charter of Fundamental Rights of the European Union as a legally binding instrument equal in juridical value to the other main treaties of the Union. Moreover, the Lisbon Treaty obliges the EU to accede to the European Convention on Human Rights

and Fundamental Freedoms and for the human rights guarantees set forth therein to constitute “general principles of the Union’s law” (through Articles 6(2) and 6(3)). This constitutes a major advance in the promotion of uniform human rights standards throughout the EU area in that it provides EU citizens with the legal capacity to sue the EU and its institutions for human rights violations as long as the admissibility requirements are first met, such as the exhaustion of local remedies. The Charter spells out the Union’s indivisible, universal values of human dignity, freedom, equality and solidarity as well as principles of democracy and the rule of law. Thus, EU institutions are obliged to respect the Charter rights and Member States are likewise under the same obligation as regards their implementation of EU legislation. The European Court of Justice has the competence to ensure that Charter rights are fulfilled.

### **Other Lisbon Treaty Provisions on Human Rights**

In addition to introducing important institutional changes to the EU structure and recognising the legal status of the Charter of Fundamental Freedoms, the Lisbon Treaty contains a number of other provisions relating to human rights. For example, Article 67 affirms that the Union ‘shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States’ and that it shall ‘ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals’. The Lisbon Treaty grants the EU the legal competence to develop legislation to address issues relating to discrimination such as on the basis of race, age or gender by Article 3(3) which obliges the Union to “combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child”. The Treaty also reiterates the Union’s resolve ‘to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia’ as well as through police and judicial cooperation and other authorities and the mutual recognition of judgments in criminal matters. It is worth noting also that the Conference which adopted the Lisbon Treaty declared that, with respect to Article 6(2), discussed above, the “Conference agrees that the Union's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law” and that the regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights could be reinforced when the Union accedes to the European Convention on Human Rights and Fundamental Freedoms. The Conference also declared with regard to certain other provisions of the Lisbon Treaty that “respect for fundamental rights and freedoms implies, in particular, that proper attention is given to the protection and observance of the due process rights of the individuals or entities concerned”.

### **New Solidarity Mechanisms**

Another important facet of the Lisbon Treaty is the extent to which it promotes social cohesion inside and outside the EU. In line with the Treaty’s preamble which refers to the Member States’ desire “to deepen the solidarity between their peoples while respecting their history, their culture and their traditions”, Article 2 includes ‘solidarity’ as a basic value of the Union, together with respect for human dignity, freedom, democracy, equality, the rule of law, respect for human rights including the rights of persons belonging to minorities, pluralism, non-discrimination, tolerance, justice, and equality between women and men. Other provisions in the Treaty reiterate the importance of ‘solidarity between generations and protection of the rights of the child’ and ‘economic, social and territorial cohesion, and solidarity among Member States’ (Article 3), as well as the Union’s resolve to “contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the

protection of human rights, in particular, the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter” (Article 3 and echoed in Article 21).

An essential element of the Lisbon Treaty’s emphasis on solidarity lies in the field of the implementation of a common foreign and security policy which in Article 24 specifies shall be “based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States’ actions.” Equally, Member States undertake “to work together to enhance and develop their mutual political solidarity” and to “refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.” The European Council and the High Representative have the responsibility to ensure compliance with these principles of solidarity. Furthermore, Member States are under an obligation to ‘show mutual solidarity’ in regard to any matter of foreign and security policy of general interest in order to determine a common approach by consulting one another within the European Council before taking any action on the international scene or entering into any commitment which could affect the Union's interests (Article 32).

Other Lisbon Treaty provisions promote greater solidarity with regard to asylum, immigration and external border control (Article 67), the fair sharing of responsibility among Member States (Article 80), the economic and energy situation (Article 122), the environment (Article 194) or in respect of “a terrorist attack or the victim of a natural or man-made disaster” (Article 222).

In terms of implementation, a procedure is laid down in Article 222 under Title VII on “Security Clause” which foresees the adoption of a decision “by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy”, that the Council “shall act in accordance with Article 31(1) of the Treaty on European Union where this decision has defence implications” and that the “European Parliament shall be informed”.

### **New Challenges and Prospects for Human Rights Policy and Implementation**

Article 21 of the Lisbon Treaty that defines the guiding principles of the Union’s external action specifies that the Union shall promote international cooperation in all fields, promote and support democracy, the rule of law, human rights and the principles of international law, work to preserve peace, prevent conflicts and strengthen international security in line with the United Nations Charter, foster the sustainable economic, social and environmental development of developing countries with the primary aim of eradicating poverty, encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade, promote protection of the environment and the sustainable management of global natural resources with a view to ensuring sustainable development, assist populations, countries and regions confronting natural or man-made disasters, and promote an international system based on stronger multilateral cooperation and good global governance. The Treaty of Lisbon also seeks to address threats arising from climate change by according these issues high priority in EU policy making

The Treaty of Lisbon in Article 214 also envisages the establishment of a European Voluntary Humanitarian Aid Corps and requires Union humanitarian field operations to be conducted “in compliance with the principles of international law and with the principles of impartiality, neutrality and non-discrimination.” Other provisions reaffirm the Union’s commitment to poverty eradication through its external action policies and in relation to Union development cooperation.

In short, the Treaty of Lisbon opens up a wide range of exciting new avenues and the Forum provides an opportunity for civil society organisations and the EU to consider together the practical implications of these changes for the better human rights promotion and protection inside the EU and in its external relations.

### **Practical Issues that Participants May Wish to Consider**

1. How could the EU make the most of the new institutional arrangements described above, in particular, the establishment of the new post of High Representative / Vice-President and of the European External Action Service, in order to strengthen and improve its external action in human rights matters, while enhancing policy coherence?
2. The Lisbon Treaty increases the EU's internal commitment to human rights promotion and protection by conferring upon the Charter of Fundamental Rights legally binding status and by obliging the EU to accede to the European Convention on Human Rights. How could these developments be reflected better in EU external relations?

*Participants are encouraged to formulate responses and concrete recommendations to these questions. Your responses and recommendations will constitute a vital part of the final report and the basis for possible further follow-up to this Forum.*

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**12th Annual EU-NGO Forum on Human Rights  
European Union Human Rights Instruments and the  
Lisbon Treaty: State of Play and Way Forward  
Brussels, Belgium, 12-13 July 2010**

Working Group I:

“EU Instruments in the Fight against the Death Penalty”

*The views expressed in this Background Paper are those of the expert consultant only  
and do not necessarily reflect those of the European Union or its Member States.*

*Prepared by:*

Lyal S. Sunga, June 2010

Visiting Professor

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Lund, Sweden

**12th Annual EU-NGO Forum on Human Rights  
EU Human Rights Instruments and the Lisbon Treaty:  
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**Rationale behind Working Group I: “EU Instruments in the Fight against the Death Penalty”**

What is the EU’s position on the death penalty? How can the EU use its considerable economic and political influence more effectively to encourage third States to abolish the use of the death penalty? Does the EU need to further strengthen implementation of EU instruments against the use of the death penalty now that the Lisbon Treaty has entered into force? In what ways could it do so?

Arguments for and against the death penalty are well known, but they are worth recalling here because they explain the EU’s clear and consistent position against it as well as the rationale behind Working Group I. It is then valuable to outline the EU’s position and instruments in the fight against the death penalty including through various UN avenues.

**Arguments for and against the Death Penalty**

The main arguments for and against use of the death penalty divide into considerations of ethics and justice in a broader sense on the one hand, and considerations relating to the administration of justice in a normative, institutional and formal sense, on the other hand. According to the Report of the UN Secretary-General on “Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty” (E/2010/10 of 18 December 2009 at para. 7):

“At the beginning of 2004, 79 States had already abolished the death penalty for all crimes, a considerably higher number than that recorded at the beginning of the previous quinquenniums, in 1999, when there had been 70 completely abolitionist countries, and 1993, when there had been 55. No fully abolitionist State reintroduced the death penalty during the survey period. By the end of the quinquennium, in 2008, 95 countries were abolitionist for all crimes. In 2009, Burundi and Togo abolished the death penalty for all crimes”.

The report further indicates that of the 41 countries and territories that had *de facto* abolished the death penalty by the beginning of 2004, by the end of 2009, 5 had abolished the death penalty for all crimes, and one State, Kazakhstan, had abolished the death penalty for ordinary crimes (at para. 18 of the Secretary-General’s report). States which could be termed as ‘retentionist’ (i.e. States that use the death penalty and have actually conducted executions during the previous decade), declined in the period 2004-2008 from 62 States to 47 States (at para. 25), warranting the conclusion that “the rate at which countries have embraced abolition has continued and even accelerated, if abolition is measured by the proportion of retentionist States that leave the category during the five years under consideration” (at para. 31).

**Proponents of the death penalty** have argued that justice requires retributive punishment at a level commensurate to the crime committed. This implies that for murder, treason or other crimes of similar gravity, justice requires the harshest punishment according to the maxim that ‘the punishment should fit the crime’. Beyond this argument, which is based on the notion of justice as demanding ‘an eye for an eye’, death penalty proponents have often contended that the death penalty deters would-be criminals from perpetrating murder or other crimes for which the death penalty might be enforced, which in turn strengthens

the administration of criminal justice. Moreover, they argue that the families and survivors of a murder victim have a moral right to see the ultimate sanction imposed upon the perpetrator in order to satisfy not only their need for revenge, but also to help end their suffering and anguish caused by the tragic loss of their loved one. The execution of a convicted murderer could also reassure relatives, and the community at large, that the murderer will never kill again either while in prison, or after having being released on parole or having received a pardon, or even after having escaped from prison. Sanctions short of execution they argue, such as solitary confinement or removal of certain privileges do not provide sufficient deterrence for killers who might kill again. Others have argued that the death penalty helps to relieve prison overcrowding and saves taxpayers the expense of keeping persons incarcerated for life.

**The EU considers that abolition of the death penalty** contributes to the enhancement of human dignity and the progressive development of human rights and it opposes the use of the death penalty in all circumstances. The EU considers the death penalty to be cruel, inhuman and degrading punishment that fails to deter criminal behaviour, and as such it represents an unacceptable denial of human dignity and integrity. Any miscarriage of justice - which is inevitable in any legal system - becomes irreversible once the death penalty has been enforced.

As Mahatma Gandhi said, 'an eye for an eye makes the whole world blind'. Moreover, the use of the death penalty lowers the moral status of the State to that of the murderer, making the State a killer to punish a killer. As for the moral rights of the friends and families of the murder victim to see retribution for the crime, why should the drive of family members for revenge take precedence over other more important moral considerations against the use of the death penalty? Also, the assumption that survivors of murder victims are commonly in favour of capital punishment may not hold up in reality. In many instances all around the world, family members of murder victims have expressed their respect and love for the victim while maintaining an anti-death penalty stance on grounds that the response to one violation should not be another, and that the better way to honour victims is by preventing violence rather than by perpetuating it. In any case, killing the murderer cannot bring the victim back to life or undo the suffering that friends and family have suffered from the crime. Not only that, but the use of the death penalty further compounds human suffering, not only of the person to be executed, but of his or her friends and family while the convicted person waits on 'death row' and after the execution as well.

As for the administration of criminal justice, numerous statistical studies have found no evidence to support the claim that the use of the death penalty has greater deterrent value than other forms of punishment. A possible reason for this lack of correlation between the use of the death penalty and the murder rate might be that criminals simply do not expect to get caught and that many murders for which the death penalty have been imposed, were committed without sufficient calculated reflection as to weigh the possible penal consequences. Others were 'crimes of passion'. Even the financial costs argument cannot be sustained, because death penalty cases involve extensive appeals that soak up judicial resources. In fact, death penalty cases can be much more costly than cases involving life sentences without parole because of the careful procedural requirements that should be met to avoid that an innocent person is executed for a crime they did not commit.

A most worrying reality in countries that use the death penalty is that inevitably, some innocent persons will be executed. There have been many cases in the United States for example where DNA testing has revealed in a highly persuasive scientific way that the death penalty was imposed on a person who did not commit the crime. Even a single case of an innocent person being put to death for a crime he or she did not commit, must count as a horrifying and gross injustice, and it shows the falsity of the argument of death penalty proponents



that sufficient legal safeguards exist to ensure that only guilty persons are executed. Once a person has been wrongly put to death, no legal or other measure will ever bring them back. As Voltaire said: “It is better to risk saving a guilty person than to condemn an innocent one.”

Other disturbing aspects to the use of the death penalty undermine the claims of proponents that this form of punishment serves justice. In many countries, persons with mental disabilities, the indigent, disadvantaged, or members of certain minority groups, are much more over represented in the prison population than either their numbers or the proportion of the total crimes they commit, warrant, and are much more likely to be sentenced to death as well. The distorted character of the administration of criminal justice in many countries that favours the rich and powerful as well as individuals from mainstream ethnic, religious, racial or cultural elements of the population, requires a healthy dose of skepticism over pro-death penalty arguments. Where the death penalty is used on a widespread or systematic basis or without proper legal safeguards, it can amount to summary or arbitrary executions, particularly in situations of serious political instability, civil war, or in occupied territories.

### **EU Instruments against the Death Penalty**

The EU uses all its available tools of diplomacy and cooperation assistance to work towards the abolition of the death penalty. As part of these efforts, the EU regularly calls for moratoria to be instituted in countries which have not abolished it, and in respect of those countries that still use it, to progressively restrict its use, and to ensure that wherever it is used, it should be carried out only in conformity with the relevant international minimum standards, in particular, the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, approved by the UN’s Economic and Social Council resolution 50 of 25 May 1984. It is important to recall in this section the universal instruments as well because the EU has been and continues to provide leadership on this issue also through the UN.

In terms of universal standards and norms, the Second Optional Protocol, 1989, to the International Covenant on Civil and Political Rights, 1966, (ICCPR) provides a means by which any State which has ratified the ICCPR, can indicate its commitment to abolish the death penalty within its own jurisdiction. As of 21 May 2010, the ICCPR had been ratified by 165 States, and the Second Optional Protocol had been ratified by 72 States. The ICCPR addresses the death penalty in Article 6 in the context of the right of every human being to life, which shall be protected by law and not arbitrarily taken away. Article 6(2) stipulates that in “countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law” and that it can only be imposed “pursuant to a final judgement rendered by a competent court”. In no case shall the death penalty be used against persons below 18 years of age or against pregnant women (Article 6(5)). Under Article 37(a) of the Convention on the Rights of the Child (CRC), a legally binding multilateral treaty ratified by every State except for Somalia and the United States, States Parties shall ensure that “Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”. The Economic and Social Council’s Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, a non-binding resolution, provide for limitations to the conditions under which the death penalty can be used in States which have not abolished it.

The EU’s policy is that the death penalty shall not be used within the EU area and that it should not be used anywhere in the world. In line with this position, the Council of Europe Summit, held in October 1997, called for the universal abolition of the death penalty, and new Member States of the Council of Europe have undertaken to suspend the use of the death penalty and to ratify the 6<sup>th</sup> Protocol to the European Convention

on Human Rights committing State Parties not to use it under any circumstance. The 6<sup>th</sup> Additional Protocol to the European Convention on Human Rights, adopted in 1983 and the 13<sup>th</sup> Additional Protocol adopted in 2002, urge States to abolish the death penalty during time of peace and war respectively. The European Union's stipulation that candidate States must first abolish the death penalty is echoed in a similar requirement from the Council of Europe such that no country in Europe, except Belarus, has the death penalty. The Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE) adopted a resolution on 29 July 2009 for a moratorium on the death penalty and its abolition. In addition, the Office of Democratic Institutions and Human Rights of the OSCE each year publishes a background paper on the use of the death penalty in the OSCE Member States. In September 2007, the Committee of Ministers of the Council of Europe declared 10 October each year henceforward to be a "European Day against the Death Penalty" and by December 2007, the European Union indicated its official recognition of this European Day. The EU also remains committed to exchanging information on the abolition of the death penalty under the Human Dimension Framework of the OSCE. It is worth mentioning that the Rome Statute of the International Criminal Court and the Statutes of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda do not allow for the death penalty in respect of punishment of individuals coming within their respective competences.

The EU worked actively in the UN General Assembly with a cross-regional alliance to ensure the adoption of resolution 62/149 on 18 December 2007 entitled "Moratorium on the use of the Death Penalty". In this resolution, the Assembly considered "that the use of the death penalty undermines human dignity" and that a moratorium, in other words, an immediate suspension on its use, would contribute to the enhancement and progressive development of human rights. It also noted that there was "no conclusive evidence of the deterrent value of the death penalty and that any miscarriage or failure of justice in the implementation of the death penalty" was "irreversible and irreparable". Resolution 62/149 further expressed the Assembly's deep concern over the application of the death penalty and calls upon States that have retained it:

- “(a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984;
- (b) To provide the Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty;
- (c) To progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed;
- (d) To establish a moratorium on executions with a view to abolishing the death penalty”.

In the EU area, the Charter of Fundamental Rights, which the Lisbon Treaty in Article 6 has recognised to have the same value as the Union's principal treaties, establishes in Article 2 that "Everyone has the right to life" and that "No one shall be condemned to the death penalty, or executed". Also, Charter Article 19(2) provides that "No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.”

The EU Guidelines on the Death Penalty - the first set of EU human rights guidelines adopted by the Council in 1998 - set out the framework for diplomatic EU action, including objectives, circumstances and instruments. The Guidelines were adopted on 29 June 1998 pursuant to a declaration in the Amsterdam Treaty of the European Union of 2 October 1997 and revised and updated by the Council of the European Union in 2008. They remain subject to future review every three years. The Guidelines include a list of

“minimum standards” to be used in auditing third States that still maintain capital punishment. In certain regards, the minimum standards reach beyond those contained in the relevant United Nations safeguards. For example, the EU Guidelines declare that “(t)he death penalty should not be imposed for non-violent financial crimes or for non-violent religious practice or expression of conscience” and in 2008, the words “and sexual relations between consenting adults nor as a mandatory sentence” were added. The EU fights against the death penalty in particular through bilateral action, for example, raising the issue in human rights dialogues and in consultations with all third countries that maintain it, making démarches and statements to welcome positive developments such as moves towards abolition or to discourage regressive trends. The EU has registered its particular concern over countries that execute large numbers of prisoners and instances where countries have resumed executions or have withdrawn from international safeguards aimed at preventing miscarriages of justice. Over the last 5 years, the EU issued more than 80 démarches to third countries or territories.

In addition, the European Instrument for Democracy and Human Rights (EIDHR) provides substantial funding for NGO efforts against the death penalty worldwide. Abolition of the death penalty is one of the thematic priorities for assistance under the EIDHR. Since 1994, the Commission has funded over 30 projects worldwide, with an overall budget of over €15 million. Building on this solid record, the EIDHR is - following the last call for proposals on actions covered by the EU Guidelines on the Death Penalty - currently allocating an additional over €8 million to 16 abolitionist projects around the world, thereby making the EIDHR the lead source of funding for abolitionist projects worldwide. Funded activities include awareness-raising, monitoring of conditions of implementation of the death penalty and the application of minimum international standards, legal reform to limit the use of or abolish the death penalty as well as the provision of legal assistance to cases of particular concern and the promotion of the Second Optional Protocol to the International Covenant on Civil and Political Rights (or similar regional instruments).

The EU also collects information about the number of persons awaiting execution and those who have been executed. It raises the issue of the death penalty in its relations with third countries, including on individual cases in certain instances. For example in the Philippines, the European Commission supported the ‘Anti-Death Penalty Campaign’ launched by FLAG which involved the provision of legal assistance to persons on death row who could not afford private defence lawyers. Not long after FLAG petitioned the Supreme Court seeking to stop executions, the Philippines declared a moratorium on the death penalty. The EIDHR also supported networking among anti-death penalty organizations and churches which helped to raise awareness about the issue, as well as to assist the University of the Philippines to develop DNA forensic tests to apply systematically in all death penalty cases such as to exculpate wrongly convicted individuals. Similar kinds of initiatives have been undertaken also in Taiwan.

### **Practical Issues that Workshop I Participants May Wish to Consider**

1. How would you assess the EU’s action in individual cases? What could be the lessons learned and how could the Lisbon Treaty framework strengthen such action?
2. What is your assessment of the elements for EU action provided for in the Guidelines? What other measures would you recommend should be taken?
3. Should the EU take additional measures to support the worldwide abolitionist movement with a view to wiping out the use of the death penalty in all countries?
4. What kinds of partnerships should the EU engage in with NGOs to support the movement against the death penalty in third countries?
5. How do you assess EU policy and its cooperation with civil society on this issue?

6. What lessons could the EU draw from civil society experience in fighting against the death penalty?
7. How can the EU more effectively assist and support the trend in Sub-Saharan Africa from moratorium to complete abolition of the use of the death penalty?
8. Do you think that in some countries a focus on bringing about a moratorium could detract from pushing more for an outright and unconditional abolition of the death penalty?
9. Should the EU support the Working Group on the Death Penalty of the African Commission on Human and Peoples' Rights? If so, which forms should this support take?
10. What role should the EU play to encourage the legal challenges against the use of the death penalty that are increasingly being used in certain Asian countries?

*Participants are encouraged to formulate responses and concrete recommendations to these questions, as well as to those put forward in the background paper on the general theme of the Forum. Your responses and recommendations will constitute a vital part of the final report and the basis for possible further follow-up to this Forum.*

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**12th Annual EU-NGO Forum on Human Rights  
European Union Human Rights Instruments and the  
Lisbon Treaty: State of Play and Way Forward  
Brussels, Belgium, 12-13 July 2010**

Working Group II:

“The EU’s Role for the Promotion and Protection of  
Economic, Social and Cultural Rights”

*The views expressed in this Background Paper are those of the expert consultant only  
and do not necessarily reflect those of the European Union or its Member States.*

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**12th Annual EU-NGO Forum on Human Rights  
EU Human Rights Instruments and the Lisbon Treaty:  
State of Play and Way Forward, Brussels, Belgium, 12-13 July 2010**

**Rationale behind Working Group II: “The EU’s Role for the Promotion and Protection of Economic, Social and Cultural Rights”**

How does the EU view the relationship between civil and political rights on the one hand, with economic, social and cultural rights on the other? How does the EU use economic, social and cultural rights in the design and implementation of internal policies and legislation, as a basis upon which to engage with third countries? In what ways should the EU work to support the promotion and protection of economic, social and cultural rights in third countries through political dialogue and development cooperation? Should the EU develop specific instruments on economic, social and cultural rights to help guide its external relations with third countries with regard to promotion of these kinds of rights, and if so, what should be the content of such instruments?

**Civil and Political Rights / Economic, Social and Cultural Rights**

The Universal Declaration of Human Rights, adopted on 10 December 1948, a highly influential but non-binding resolution of the General Assembly, encompasses both civil and political rights (such as the rights to life, not to be enslaved or tortured, to vote, fair trial, and the freedoms of association, speech, opinion and expression), on the one hand, and economic, social and cultural rights on the other. The International Covenant on Economic, Social and Cultural Rights, 1966, (ICESCR) is the main universal instrument that spells out rights relating to work, social security, family life, an adequate standard of living, health, education and culture, but economic, social and cultural rights find expression also in certain provisions of other multilateral treaties, most notably: the International Convention on the Elimination of All Forms of Racial Discrimination, 1965, the Convention on the Elimination of All Forms of Discrimination against Women, 1979, the Convention on the Rights of the Child, 1989, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, and the Convention on the Rights of Persons with Disabilities, 2006.

The Declaration and Programme of Action concluded at the 1993 Vienna World Conference on Human Rights affirmed that “All human rights are universal, indivisible and interdependent and interrelated” and that “the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis”. Paragraph 5 further affirms that all States, regardless of their political, economic and cultural systems, have a duty to promote and protect all human rights and fundamental freedoms. Importantly, the UN Committee on Economic, Social and Cultural Rights, in General Comment 3, underlined that the argument that economic, social and cultural rights were in principle not subject to being implemented in a court of law, did not hold up, particularly in situations where the constitution of the country concerned enshrined them. Many economic, social and cultural rights, for example, those relating to labour law and social security, the right to education, the right to food, the right to health, and the principle of non-discrimination in the enjoyment of these rights, were clearly justiciable as demonstrated by the growing number of cases in the domestic courts of some countries. Moreover, the official position of the Office of the UN High Commissioner for Human Rights has been identical to that endorsed at the Vienna World Conference to the effect that all human rights are universal, indivisible, interdependent and interrelated, such that no priority should be accorded to one right over another nor any hierarchy recognized among human rights in terms of importance, legal status, justiciability or social value. Furthermore, an Optional Protocol

to the ICESCR adopted on 10 December 2008 has attracted the signatures of 32 States, but by 6 June 2010 had not yet been ratified by any State. The Protocol, which can enter into force three months after it receives the 10<sup>th</sup> ratification, allows a party to the ICESCR and its Protocol to recognise the competence of the UN Committee on Economic, Social and Cultural Rights to receive communications from individuals and groups claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant that binds that State Party. The advent of the Protocol thus augurs well for the more concrete application of economic, social and cultural rights in future.

It is sometimes heard that States have to implement civil and political rights immediately, but not economic, social and cultural rights, which are subject to ‘progressive realization’ (as per Article 2(1) of the ICESCR), but this misunderstands the issue. First, every State party to the ICESCR, which by 6 June 2010 numbered 160, undertakes in the same Article “to take steps ... to the maximum of its available resources” to realize the Covenant’s rights. Second, while the more effective realization of some of the rights set out in the ICESCR do indeed depend partly on the availability of resources to support their better enjoyment (such as well functioning hospitals, schools and social security schemes), other Covenant economic, social and cultural rights, such as the right to form and join trade unions and to strike and the obligation to protect children and young persons from economic and social exploitation, equal remuneration for work of equal value without distinction of any kind, are capable of immediate implementation and require little in the way of resources.

### **EU Policy on Economic, Social and Cultural Rights**

The EU considers human rights to be universal and indivisible and it actively promotes and defends human rights within the EU area as well as in its relations with outside countries. In affirming the universality and indivisibility of rights, the EU’s language echoes that of the Vienna Declaration and Programme of Action, which implies recognition of the equal importance of economic, social and cultural rights.

At the Strasbourg Summit held on 9 December 1989, the Heads of State or Government of 11 Member States adopted a Community Charter of Fundamental Social Rights for Workers inspired by the Conventions of the International Labour Organization and the European Social Charter of the Council of Europe. The Community Charter reaffirms rights relating to: freedom of movement; employment and remuneration; improvement of living and working conditions; social protection; freedom of association and collective bargaining; vocational training; equal treatment for men and women; information, consultation and participation of workers; health protection and safety at the workplace; protection of children and adolescents; elderly persons; and disabled persons.

The Charter of Fundamental Rights of the European Union enshrines a number of key economic, social and cultural rights. The Charter’s formulation of the right to education in Article 14 embraces also the right to access of vocational and continuing training as well as the possibility to receive free compulsory education. Included also within the ambit of Article 14 is the freedom to establish educational institutions ‘with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions’ to the extent that this does not conflict with the domestic law governing the exercise of these rights and freedoms. The freedom to choose an occupation, to work and to pursue a freely chosen or accepted occupation is guaranteed in Article 15. Third country nationals who are authorised to work in the EU area are entitled to equivalent working conditions as Union citizens. In addition to its equality before the law and non-discrimination provisions including equality between men and women, the Charter states in Article 22 that “The Union shall

respect cultural, religious and linguistic diversity.” The Charter addresses the rights and well being of the child (Article 24), the elderly (Article 25) and persons with disabilities (Article 26). Chapter IV of the Charter entitled ‘Solidarity’ pertains to the rights of workers to information, the right of collective bargaining and action including the right to strike, protection against unjustified dismissal, fair and just working conditions, prohibition of child labour and protection of young people at work, as well as rights connected to family and professional life, social security and social assistance, health care, access to services of general economic interest, and the obligation of the Union to integrate into its policies a high level of environmental protection in accordance with the principle of sustainable development (Articles 27-37). In January 2009, the European Economic and Social Committee (EESC) issued an opinion on the European Instrument for Democracy and Human Rights with a view to improving civil society participation in EU external policies. The EESC called for economic, social and cultural rights “to be given greater importance in the European Union’s policies” particularly in light of the financial and economic crisis, and it noted that the recent adoption of the Optional Protocol to the ICESCR presented the Commission and EU Member States with an opportunity to place greater priority on this issue in their bilateral dialogues with third countries.

The EU’s Generalised System of Preferences (GSP) - by which the EU provides preferential access to the EU market to 176 developing countries and territories, in the form of reduced tariffs for their goods when entering the EU market - constitutes a formidable means by which the EU encourages enhanced respect for economic, social and cultural rights. The GSP+ provides a special incentive arrangement for sustainable development and good governance that offers additional tariff reductions to encourage and support vulnerable developing countries to ratify and implement the relevant international conventions. In particular, GSP+ beneficiaries have to have ratified and implemented effectively 27 specified international conventions on human rights, labour standards, sustainable development and good governance. Among the required conventional obligations to acquire and maintain GSP+ status are the ICESCR, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and a number of conventions adopted under the auspices of the International Labour Organisation which envisage stronger promotion and protection of various economic, social and cultural rights.

An ‘Everything But Arms (EBA) arrangement further provides Duty-Free, Quota-Free access for all products for the 49 Least Developed Countries (LDCs). The GSP’s main aim is to help reduce poverty and promote sustainable development and good governance as well as to facilitate developing countries to participate more fully in international trade, generate additional export revenue and develop domestic industry and jobs. The system works as an ongoing process: where a country’s performance over a three-year period exceeds or falls below a set threshold, preferential tariffs are either suspended or re-established. This indeed occurred in February 2010 with the temporary suspension of Sri Lanka’s GSP+ status.

In addition, the EU supports the work of several UN mandates dealing with economic, social and cultural rights. EU Member States have supported the continuation of mandates through the Human Rights Council on such mandates as those relating to education, housing, physical and mental health, right to food, the problem of toxic and dangerous products and wastes, internally displaced persons, indigenous peoples and the independent experts on extreme poverty and on access to drinking water and sanitation. Furthermore, the EU continues to contribute actively to the UN Commission for Social Development’s activities to promote full employment and decent work for all. It should be noted as well that the EU has consistently supported the attainment of the Millennium Development Goals and has underlined its full commitment to the realization of the right to development, for example, through its actions funded under the Development Cooperation Instrument (DCI).



Other important EU efforts as regards economic, social and cultural rights, including with respect to relations with third countries and regions, comprise:

- encouraging and facilitating the ratification and implementation of the International Labour Organisation (ILO) Conventions;
- promotion of the Decent Work Agenda, as laid out in the 2006 Commission communication on “Promoting decent work for all – The EU contribution to the implementation of the decent work agenda in the world”;
- the Lisbon Strategy for Growth and Employment;
- increased bilateral policy dialogue and cooperation with third countries on issues such as employment, labour legislation and social protection, for example, with China, India, Brazil and Mexico;
- regional dialogues, such as through the EU Africa Joint Strategy and the EU-Latin America conference; and
- the introduction of social-development objectives in the EU’s more recent bilateral, regional and inter-regional agreements that promote economic, social and cultural rights.

### **Practical Issues that Workshop II Participants May Wish to Consider**

1. Does the EU place sufficient practical emphasis on the implementation of economic, social and cultural rights within the EU area?
2. Does the EU emphasize sufficiently the importance of economic, social and cultural rights in its external relations, particularly in the following areas:
  - foreign development cooperation and external assistance;
  - trade and bilateral investment treaties; and
  - corporate social responsibility?In particular, what tools could the EU better use in this respect (e.g. political and policy dialogues relating to food security, water, health, education, infrastructure)?
3. What other avenues should the EU employ to engage partner countries in constructive dialogue on economic, social and cultural rights (e.g. with respect to Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, country reports by relevant UN Special Procedures, recommendations of the UN Universal Periodic Review, ILO recommendations, decisions of the European Committee of Social Rights)?
4. Does the EU pay sufficient attention to assisting defenders of economic, social and cultural rights, and if not, should a specific strategy be developed to focus on these particular issues?
5. Should the EU consider economic, social and cultural rights as valuable ‘entry points’ by which to enhance more productive human rights dialogues with developing countries, including at the United Nations level?
6. What synergies could be promoted between the EU’s human rights policy and its Decent Work Agenda?
7. With the entry into force of the Lisbon Treaty, should the EU develop a comprehensive instrument to clarify its endorsement of the status of economic, social and cultural rights to be equal to that of civil and political rights?
8. Should the EU appoint a focal point to ensure greater attention to economic, social and cultural rights outside the EU area?

9. Do civil society organizations consider that the EU should give more emphasis to economic, social and cultural rights? What suggestions could civil society organizations make to improve EU policy with regard to specific economic, social and cultural rights?
10. Does the EU effectively partner with civil society organizations dealing mainly with economic, social and cultural rights in third countries, and if not, what practical measures could civil society organizations recommend to improve the EU's efforts in this field?

*Participants are encouraged to formulate responses and concrete recommendations to these questions, as well as to those put forward in the background paper on the general theme of the Forum. Your responses and recommendations will constitute a vital part of the final report and the basis for possible further follow-up to this Forum.*

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**12th Annual EU-NGO Forum on Human Rights  
European Union Human Rights Instruments and the  
Lisbon Treaty: State of Play and Way Forward  
Brussels, Belgium, 12-13 July 2010**

**Working Group III:**

**“The EU’s Relations with Regional Human Rights Mechanisms”**

*The views expressed in this Background Paper are those of the expert consultant only  
and do not necessarily reflect those of the European Union or its Member States.*

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**12th Annual EU-NGO Forum on Human Rights  
EU Human Rights Instruments and the Lisbon Treaty:  
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**Rationale behind Working Group III: “The EU’s Relations with Regional Human Rights Mechanisms”**

The EU attaches great importance to human rights promotion and protection at universal, regional and domestic levels for many reasons. To be effective, universal human rights norms have to be implemented at the local level, which requires close cooperation among international, regional and national human rights systems and frameworks, including through national human rights institutions and civil society organizations. With regard to the EU area, the achievements of the Council of Europe in promoting and protecting human rights are of capital importance not only because of the intrinsic value of safeguarding human dignity, but also because, together with democratic governance and the rule of law, it provides an essential ingredient for lasting peace, stability and economic prosperity.

Cooperation between the EU, regional human rights systems and the UN human rights system, helps to strengthen the universality of human rights. Accordingly, the EU supports regional human rights organizations in other parts of the world and its long standing policy has been to deepen cooperation with them. The Lisbon Treaty’s recent adoption makes a substantial contribution to human rights promotion and protection inside the EU area and beyond. It is therefore an opportune moment for civil society organizations and the EU to discuss what steps could further strengthen the EU’s relations with regional human rights mechanisms, both directly and through the UN’s efforts to support regional human rights arrangements. In this regard, it is worth noting that the UN General Assembly has regularly adopted resolutions (the latest being 63/170, adopted in December 2008) on regional arrangements for the promotion and protection of human rights. Resolution 63/170 reiterated “that regional arrangements play an important role in promoting and protecting human rights and should reinforce universal human rights standards, as contained in international human rights instruments”. It also welcomed the many regional and subregional frameworks that focus on human rights promotion and protection, as well as “the continued cooperation towards the realization of universal standards between the Office of the High Commissioner and regional organizations in Europe and Central Asia, namely, the Council of Europe, and its various human rights bodies and mechanisms, the European Union and the Organization for Security and Cooperation in Europe, in particular for activities at the country level” (para. 6). The UN Human Rights Council has also adopted several resolutions on this question and pursuant to resolution A/HRC/12/L.2/Rev.1 adopted in September 2009, the OHCHR recently organised a workshop in Geneva on the strengthening of the cooperation between regional and international mechanisms for the promotion and protection of human rights, the last in a series of such workshops.

**Council of Europe**

The Council of Europe, founded in 1949, promotes human rights, democracy and the rule of law throughout Europe. It has 47 member countries and represents 800 million people, thus covering almost all of the European continent (with the exception of Belarus) and includes all 27 EU Member States. The Council of Europe’s human rights system is based on the European Convention on Human Rights of November 1950, which entered into force in September 1953. The European Convention on Human Rights recognizes the legal capacity of individuals to bring claims to the European Court of Human Rights which sits in Strasbourg, France. All final judgments of the Court are binding on the respondent States. The Committee of Ministers

of the Council of Europe supervises the execution of the Court's judgements and verifies whether States have adequately taken remedial measures to comply. Under the Lisbon Treaty, the EU will accede to the European Convention on Human Rights. In addition, the EU and the Council of Europe maintain close contact on an ongoing basis through a series of high level political meetings called Quadripartite meetings which are held twice a year. These meetings provide the EU Presidency, European Commission, Chairman and Secretary General of the Council of Europe with the opportunity to exchange information and views on matters of common interest and concern. Since 1992, the EU and Council of Europe carried out more than 180 programmes which were funded on a joint basis to strengthen institutions promoting human rights, democracy and the rule of law.

In May 2007, the EU concluded an important Memorandum of Understanding (MOU) that recognizes "the unique contribution of the Convention for the Protection of Human Rights and Fundamental Freedoms, of the European Court of Human Rights, as well as of other Council of Europe standards and instruments for the protection of the rights of individuals, and taking into account the importance of the Charter of Fundamental Rights of the European Union, as well as Article 6(2) of the European Union Treaty". The MOU indicates the decision of the Council of Europe and EU to develop their relationship in all areas of common interest, in particular:

- the promotion and protection of pluralistic democracy;
- the respect for human rights and fundamental freedoms;
- the rule of law;
- political and legal co-operation; and
- social cohesion and cultural interchange.

The MOU recognizes that the Council of Europe will remain the benchmark for human rights, the rule of law and democracy in Europe and that on the basis of enhanced partnership and complementarity, the Council of Europe and the EU will take all the necessary measures to promote their co-operation by exchanging views on their respective activities and by preparing and implementing common strategies and programmes for the priorities and areas of shared interest as set out in the MOU.

Regional consultations on enhancing cooperation between the international human rights system and the European mechanisms of human rights were held on 16 and 17 December 2009 in Strasbourg that brought together experts from the Council of Europe (CoE), including members of different Committees and Groups of Experts, representatives of the European Court of Human Rights, the Directorate-General of Human Rights and Legal Affairs and the Office of the CoE Commissioner for Human Rights, the European Union Agency for Fundamental Rights (FRA), the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), as well as UN human rights experts, representatives of Governments, National Human Rights Institutions (NHRIs) from the region, NGOs, and staff of the Office of the High Commissioner of Human Rights (OHCHR) to discuss ways to strengthen cooperation. The representatives of the UN and European human rights mechanisms agreed to improving regular information exchange that might encompass easier access to jurisprudence, websites and databases. The convening of judicial colloquia and the more reciprocal utilization of findings and recommendations arising from European and UN human rights mechanisms, in order to strengthen the universality of human rights and greater coherence in the interpretation of international human rights norms were also considered as well as the need to increase joint efforts to ensure improved follow up of judgments, decisions and recommendations from UN and European mechanisms. Other areas under discussion included:

- the possible establishment of a secretariat to help coordinate sharing of best practices among national human rights institutions in Europe;
- increased participation of civil society, including international and local NGOs in efforts to enhance cooperation between the UN and the European human rights systems;
- meetings between members of the European human rights mechanisms and members of UN Special Procedures and Treaty Bodies;
- the conduct of joint missions;
- improved exchange of information and experience on respective rules of procedures, working methods and reporting procedures to facilitate cooperation and learn from best practices;
- maintaining review of thematic areas and issues for mutual cooperation such as the Council of Europe's Commissioner for Human Rights, the OSCE focal point on Human Rights Defenders and the UN Special Rapporteur on Human Rights Defenders;
- reciprocal sharing of best practices and lessons learned in the promotion and protection of human rights;
- encouraging the UN Human Rights Council Universal Periodic Review process to take systematic account of the reports of European human rights mechanisms;
- consideration to have staff exchanges between European and UN mechanisms;
- strengthening of joint efforts to provide technical cooperation to States; and
- increased cooperation between European human rights mechanisms and OHCHR field presences.

On 4 February 2010, the EU Delegation to the Council of Europe issued an oral statement in connection with a meeting between the UN and Council of Europe that day concerning enhanced cooperation in the field of human rights. The EU recalled UN General Assembly resolution 63/13 of 16 December 2008 on UN-Council of Europe cooperation and reiterated its efforts to see an end to use of the death penalty. The EU also welcomed closer UN-Council of Europe cooperation on the rights of the child and the problems of violence against women and torture. It also drew attention to its continued support on monitoring national measures to prevent torture through the European Instrument for Democracy and Human Rights, the UN Sub-Committee on the Prevention of Torture and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The EU also noted ongoing cooperation among the UN, OSCE and Council of Europe to address the serious problem of human trafficking. Furthermore, the EU Delegation underlined its support for the Council of Europe's cooperation with all UN human rights monitoring and reporting mechanisms, in particular, those relating to UN Human Rights Council special procedures and the Universal Periodic Review process and the UN human rights treaty bodies.

### **Organization for Security and Cooperation in Europe**

The EU has been working closely with the OSCE and its Office for Democratic Institutions and Human Rights (ODIHR) in the areas of conflict prevention, crisis management, human rights monitoring and democratization in the context of post-conflict transition. ODIHR, based in Warsaw, Poland, provides to participating States:

- elections monitoring and election assistance projects;
- assistance to strengthen the rule of law, the role of civil society and democratic governance;
- assistance to OSCE field missions with training, exchange of experiences, and regional co-ordination
- early warning and conflict prevention;
- OSCE monitoring of the fulfilment of participating State commitments;
- regular human-rights training for government authorities, civil society and OSCE staff;

- ❑ assistance to help them implement their international legal obligations and to ensure that anti-terrorism measures comply with international human rights standards;
- ❑ assistance to promote tolerance and non-discrimination including with regard to hate crimes, racism, anti-Semitism, intolerance against Muslims and others and to promote the full integration of Roma and Sinti groups into society; and
- ❑ development and implementation of gender mainstreaming strategies to improve the situation of women throughout the OSCE region.

EU Member States contribute substantially to the OSCE budget and to many of the OSCE's activities, for example, to second elections monitoring officials and to lend support to national electoral and human rights institutions in new democracies. ODIHR has worked regularly with the Council of Europe to develop legal opinions on draft laws relating to human rights and in regard to electoral observation. For example, in June 2009, an OSCE / ODIHR Expert Panel on Freedom of Assembly and the Council of Europe's European Commission for Democracy through Law [Venice Commission] carried out a joint review of the Kyrgyz Draft Law on Assemblies prepared by the Ombudsman.

### **Organization of American States**

In May 1948, the Organization of American States (OAS) established the ninth Inter-American Conference and adopted the American Declaration of Rights and Duties of Man - months before the adoption of the Universal Declaration of Human Rights on 10 December 1948. Thus, the Inter-American system began even earlier than the European system, but whereas the European Convention entered into force in 1953, the Inter-American Specialized Conference on Human Rights adopted the American Convention on Human Rights in November 1969. It took 7 more years for it receive the 11 ratifications necessary to enter into force (on 18 July 1978). The OAS established two bodies to promote the observance and protection of human rights: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

The Inter-American Commission began operations in 1960 whereas the Court could not be settled and organized until the Convention entered into force. The Inter-American Court of Human Rights, which is based in San José, Costa Rica, is an autonomous judicial institution of the Organization of American States, established in 1979, with competence to apply and interpret the American Convention on Human Rights and other applicable human rights treaties and norms. The Commission began to carry out *in situ* visits to monitor situations and investigate human rights violations in 1961 and since then, it has conducted around 70 missions in 23 Member States and published more than 40 special country reports. The Commission's competence was strengthened in 1965 when it was explicitly authorized to receive and examine individual complaints and petitions alleging particular human rights violations. Since then, the Inter-American Commission has received thousands of petitions which have resulted in some 12,000 cases which have been processed or are currently being processed.

In order for the Inter-American Court of Human Rights to seize jurisdiction over a case, the State Party involved must not only have ratified the Convention, but must also recognize the Court's competence over that particular case, or State Parties can recognize the Court's contentious jurisdiction on a blanket basis. Unlike the European Court of Human Rights to which individuals can allege violations directly before the Court, in the Inter-American system, individuals must first lodge their complaint with the Inter-American Commission which then has the responsibility to rule on whether or not the complaint is admissible. Where the Commission rules that the case is ruled admissible and that the State Party to the Convention has

committed a violation of one of the rights set out in the Convention, the Commission can provide the State Party with a set of recommendations to redress the violation.

On 8-9 December 2009, a Regional Consultation between the UN Office of the High Commissioner for Human Rights and the OAS on Strengthening Cooperation and Dialogue between the International and Regional Human Rights Systems was held in Washington, DC. The OAS also cooperates with the EU on human rights issues. On 17 December 2009, an MOU was signed in Washington, DC, between the European Commission and the General Secretariat of the OAS to continue their efforts to strengthen democracy, defend human rights and foster sustainable development. The MOU recalls that the European Commission and OAS have been cooperating for 20 years in domains of common interest as reflected in the fact that the OAS had granted Permanent Observer Status to the European Commission in 1989. The MOU provides a framework for inter-institutional dialogue and continued cooperation between the European Commission and OAS General Secretariat through consultative meetings on issues of common interest, information sharing, summit meetings and the sharing of experiences and best practices.

### **African Union**

The African human rights system was established through the adoption on 27 June 1981 of the African Charter on Human and Peoples' Rights and its two Protocols: the Protocol establishing the African Court on Human and Peoples' Rights; and the Protocol on the Rights of Women in Africa. The African Charter provided for the African Commission of Human and Peoples' Rights which is a conciliatory and investigative entity mandated to promote and protect human and peoples' rights, and which was established in 1987. The Assembly of African Heads of State and Government functioned as the supreme political organ of the Organization of African Unity (OAU). The OAU has now become the African Union. Unlike the Inter-American and European regional systems, the African Charter did not establish a regional court of human rights and a separate Protocol was developed to establish the African Court of Human and Peoples' Rights. In June 1998, the OAU Members adopted the Protocol and accordingly, the African Court of Human and Peoples' Rights was established on 24 January 2004. The OAU was replaced by the African Union a few months later however. The AU's Constitutive Act in Article 3 emphasizes human rights much more than did the OAU Charter of 1963. Furthermore, it encourages international cooperation 'taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights', the strengthening of 'democratic principles and institutions, popular participation and good governance' as well as human and peoples' rights as set out in the African Charter on Human and Peoples' Rights and other relevant human rights instruments. The African Union's Constitutive Act establishes the African Court of Justice but in 2004, President of Nigeria Olusegun Obasanjo proposed to the AU Assembly that the African Court on Human and Peoples' Rights and the African Court of Justice (which had not yet come into force) should be integrated into a single institution. This was done and the first judges were appointed to the Court in July 2006. On 15 December 2009, the Court handed down its first decision concerning the petition of Michelot Yogogombaye to dismiss charges pending in Senegal against former Chadian president Hissein Habre.

A seminar on the strengthening of the cooperation and dialogue between the International and Regional Human Rights Systems was also held by the UN Office of the High Commissioner for Human Rights and the AU in Addis Ababa in the beginning of December 2009 to discuss the African human rights institutions and their cooperation with the UN.

In 2008, the EU and the AU agreed to establish a biannual human rights dialogue. The last round of this dialogue took place in the beginning of May 2010. Following this round, the EU and AU issued a Joint



Communiqué on this 6<sup>th</sup> African Union-European Union Human Rights Dialogue that took place in Brussels. During this last round, the two parties discussed many issues such as: the death penalty; freedom of expression and association; the right to development, the fight against all forms of discrimination as well as the rights of migrants, asylum seekers and refugees. A number of positive developments were noted including harmonization in the rules of procedure between the African Court and Commission on Human and People's Rights, progress made on the African Human Rights Strategy and the cooperative Africa-EU spirit that prevailed during the 13<sup>th</sup> session of the UN Human Rights Council. Discussion also focussed on reinforcement of the EU human rights framework through the entry into force of the Lisbon Treaty, including the EU's accession to the Convention for the Protection of Human Rights and Fundamental Freedoms. The AU and EU also took note of progress achieved during the April 2010 Informal Joint Experts Group meeting of the Africa-EU Partnership on Democratic Governance and Human Rights, including on the establishment of the Africa-EU Platform for Dialogue on Democratic Governance and Human Rights as well as support to the African Peer Review Mechanism. Moreover, the AU and EU undertook to continue their cooperation in multilateral fora, particularly the UN through information sharing and enhanced coordination on such issues as combatting racism, racial discrimination and xenophobia. The two sides also agreed to continue their cooperation with regard to the UN Human Rights Council's Universal Periodic Review and with regard to economic, social and cultural rights and the right to development. Another important area of cooperation concerned joint efforts to encourage the concrete implementation of UN Security Council resolutions on Women, Peace and Security, in particular as the 10th anniversary of the adoption of resolution 1325 of 31 October 2000 approaches. The EU and AU agreed to explore possibilities for EU support to AU efforts on Women, Peace and Security, including through the Africa Peace Facility, noting that the AU declared 2010 as the Year of Peace in Africa. Finally, the two sides agreed to issue a Joint Declaration on the United Nations International Day in Support of Victims of Torture on 26 June 2010. Since 2009, a civil society seminar also takes place once a year in parallel with this dialogue. European and African NGOs meet to discuss a specific human rights topic. During the last round of the dialogue, the two parties agreed on other areas of cooperation pertaining to the organization of the second round of the African-European Civil Society Seminar, which will take place prior to the human rights dialogue in Addis Ababa to be held in the fall of 2010.

### **Association of South East Asian Nations**

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967 and has Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam as its members. The ASEAN Secretariat is based in Jakarta. The EU's relations with ASEAN have been developed through the "Nuremberg Declaration on an EU-ASEAN Enhanced Partnership" endorsed by the Foreign Ministers of ASEAN and the EU at a Ministerial Meeting in Nuremberg, Germany, that took place on 15 March 2007. A Plan of Action encourages the co-hosting of seminars on human rights issues, along the lines of the ASEM seminars on human rights. Other similar initiatives designed to increase intellectual and cultural exchange, promote dialogue and capacity building related to the protection of human rights from a regional perspective are also envisaged. It is important to note also that EU-ASEAN cooperation in efforts to combat human trafficking, terrorism, corruption and trafficking in illicit drugs as well as gender equality and women empowerment involve human rights in numerous ways.

On 20 July 2009 in Phuket, Thailand, ASEAN announced the launching of the Intergovernmental Commission on Human Rights (AICHR) whose purposes are to promote and protect human rights, to promote peace, dignity, prosperity, stability and harmony in the ASEAN subregion as well as friendship and cooperation among ASEAN Member States and the well-being, livelihood, welfare and participation of

ASEAN peoples in the ASEAN Community building process”. The Commission’s stated purpose is also to “enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights” and to uphold “international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.” It is important to note that, by Article 3 of its Terms of Reference, the AICHR “is an inter-governmental body and an integral part of the ASEAN organisational structure” and it “is a consultative body.” As such, it consists of the Member States of ASEAN each of whom “shall appoint a Representative to the AICHR who shall be accountable to the appointing Government.” The Terms of Reference also provides that: “the appointing Government may decide, at its discretion, to replace its Representative.”

The EU congratulated ASEAN for the establishment of this organ (the first of this kind in the Asia-Pacific region) and reiterated the EU’s recognition of the importance of the establishment of such regional bodies for the protection and promotion of human rights around the world.

In a press release of 22 July 2009, the UN High Commissioner for Human Rights Navi Pillay welcomed the setting up of the AICHR and emphasized the fundamental role regional arrangements could play in human rights promotion and protection. She urged ASEAN to integrate civil society groups fully into AICHR’s establishment and development to fulfill the regional leaders’s stated commitment to create a people-oriented ASEAN.

### **Organization of The Islamic Conference**

On the 19th April 2010, the Secretary General of the OIC informed the UN High Commissioner for Human Rights, during her visit to Saudi Arabia that the OIC was about to establish an Independent Permanent Commission on Human Rights, and that a statute to this effect would likely enter into force at the forthcoming Council of Foreign Ministers Session, held in Dushanbe in May. He emphasized the importance of such a Commission to promote and protect human rights together with respect for Islamic values throughout the 57 OIC member states. The High Commissioner welcomed the prospects of these developments, reiterated her Office’s support for the Commission in its formative stages and agreed to build further upon UN-OIC cooperation and coordination. At the May OIC meeting in Dushanbe, the OIC Council reviewed the draft resolution on establishing an Independent Permanent Commission on Human Rights but decided to defer a vote on its adoption pending the resolution of certain other issues.

### **Practical Issues that Workshop III Participants May Wish to Consider**

1. With the entry into force of the Lisbon Treaty, should the EU develop a more ambitious human rights policy to address all regional organizations with which it has been cooperating? In what ways could civil society organizations contribute to this process?
2. How should the EU cooperate more closely with existing regional organisations? Which themes and approaches do participants consider could add value to the better promotion and protection of human rights in this connection?
3. How could the EU assist ASEAN’s new Intergovernmental Commission on Human Rights, particularly in light of the importance the EU attaches to the role of civil society organisations?
4. In what ways can the EU, in partnership with civil society organizations, help strengthen the African Commission on Human and Peoples’ Rights, and the African Court of Human and Peoples’ Rights?

5. How can the EU draw from the experience and lessons learned of the Inter-American Commission on Human Rights?
6. What role should the EU play with regard to the new Organization of the Islamic Conference Independent Permanent Commission on Human Rights that is planned to be established in the future?

*Participants are encouraged to formulate responses and concrete recommendations to these questions, as well as to those put forward in the background paper on the general theme of the Forum. Your responses and recommendations will constitute a vital part of the final report and the basis for possible further follow-up to this Forum.*

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**12th Annual EU-NGO Forum on Human Rights  
European Union Human Rights Instruments and the  
Lisbon Treaty: State of Play and Way Forward  
Brussels, Belgium, 12-13 July 2010**

Working Group IV:

“Lisbon and the EU’s Internal-External Consistency”

*The views expressed in this Background Paper are those of the expert consultant only  
and do not necessarily reflect those of the European Union or its Member States.*

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**12th Annual EU-NGO Forum on Human Rights**  
**EU Human Rights Instruments and the Lisbon Treaty:**  
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**Rationale behind Working Group IV: “Lisbon and the EU's Internal-External Consistency”**

The EU has long promoted human rights in its external relations policies, and it has a strong record in promoting beneficial changes in third countries through its human rights dialogues and consultations, the implementation of its Human Rights Guidelines, statements and démarches, technical assistance programmes and projects and various other avenues. The EU continues to show global leadership in the human rights field on such issues as the fight against the death penalty and against torture, the rights of children, freedom of opinion and expression, to mention only a few. That being said, it is a truism that no country in the world has a perfect human rights record. EU Member States face their own human rights challenges as well, for example, as regards the rights of migrants or in combatting racism, racial discrimination, xenophobia and other related forms of intolerance. It is increasingly the case that when the EU registers its concern over the human rights situation in third countries, the EU itself comes under reciprocal criticism for failing to address adequately a number of human rights problems within its own borders. Thus, the credibility of the EU in promoting human rights externally rests in large part on how effectively and visibly the EU - within the limited scope of its internal competences - and its Member States, promote human rights internally.

Since the 1960's, fundamental rights have been recognized as legally binding general principles of EU law, under the review of the European Court of Justice. More recent important developments were the adoption of the EU Charter of Fundamental Rights in 2000, which became legally binding with the entry into force of the Lisbon Treaty in 2009, but which in and of itself did not confer any new human rights related authority upon particular EU organs. The EU Fundamental Rights Agency (FRA) was established in 2007 as an EU advisory body, by a legal act of the European Union and is based in Vienna, Austria. An independent body, FRA collects and analyses comparative data and information on human rights in the EU area, carries out scientific research and surveys and cooperates with civil society in order to strengthen dialogue, awareness-raising and human rights networking. It also provides conclusions and opinions to the EU institutions and the Member States concerning the implementation of Community law and publishes an annual EU human rights report highlighting the findings of research and surveys as well as examples of best practices.

EU Member States overall have a strong record of ratification of human rights conventions in general but there is room for improvement. Many of the rights guaranteed in UN and Council of Europe human rights conventions find protection under the EU acquis. Also, the EU acquis sometimes goes further than the UN and Council of Europe conventions. However, third countries may not find this to be convincing justification for non-ratification of certain core conventions and protocols, including the UN Convention on the Rights of All Migrant Workers, 1990.

EU Member States have a very good record of providing support to UN human rights special procedure mechanisms and to the UN human rights treaty bodies, and the EU urges third countries to cooperate fully with the UN human rights system. Here also the record of EU Member States is not completely flawless in that a number of EU Member States remain behind schedule in their reporting obligations under the conventions. Certain important UN recommendations have not been implemented in all EU Member States, for example, the UN Committee against Torture's recommendation to States to introduce into domestic law

a definition of ‘torture’. Equally, at the regional level, one could cite shortcomings in EU Member State implementation of European Court of Human Rights judgments.

So far as human rights promotion within the EU is concerned, the Lisbon Treaty offers important new opportunities, but increases challenges as well. The Treaty confers upon the Charter of Fundamental Rights legally binding force, while also obliging the Union to accede to the European Convention on Human Rights. In the same vein, the recently adopted Stockholm Programme, which sets out priorities in the area of freedom, security and justice over the coming five years, emphasizes the promotion of human rights. The Commission is expected to adopt a Communication on Fundamental Rights policy later this year. Yet at the same time, the Lisbon Treaty does not, beyond certain specific areas such as the fight against racism and xenophobia or the protection of refugee rights, grant the EU *general* competence to adopt internal policies or measures to promote human rights, since these are constrained by limitations in the competences transferred to the EU under the Treaties. Thus, while the Lisbon Treaty puts greater emphasis on human rights in EU external relations, it also increases the challenge to ensure consistency between external and internal policies.

The new institutional arrangements that the Lisbon Treaty ushers in also raises both opportunities and challenges in terms of ensuring consistency in approach to human rights issues inside and outside the EU. The relationship between the new European External Action Service and the European Commission has yet to be fully worked out. The Directorate-General for Justice, Freedom and Security has been divided into two Directorates-General, with the establishment of a new European Commissioner responsible for Justice, Fundamental Rights and Citizenship. Certainly, the establishment of this new post, together with the Lisbon Treaty’s recognition of the legally binding character of the Charter of Fundamental Rights, accords human rights a much higher profile than they had previously claimed. The extent to which human rights acquire priority status in practice within the other Directorates-General remains to be seen. In the other European institutions, internal and external human rights policies are also dealt with in separate organs or directorates. There is for example the Parliamentary Committee on Civil Liberties, Justice and Home Affairs (LIBE), and the Committee on Foreign Affairs’ Subcommittee on Human Rights (DROI). In the Commission, there are Human Rights Units or capacities under the Directorates-General of External Relations (due to join the future External Action Service together with the Human Rights Unit of the Council Secretariat), EuropeAid, Development, Trade and Humanitarian Aid, whilst, on the internal side, fundamental rights and anti-discrimination issues are addressed by the new Directorate-General for Fundamental Rights and Citizenship and the Directorate-General for Employment, Social Affairs and Equal Opportunities. Similarly, the roles of specialised agencies such as FRA, EUROPOL, EUROJUST and FRONTEX will likely prove critical to the future of human rights in the EU area.

#### **Practical Issues that Workshop IV Participants May Wish to Consider**

1. Where do inconsistencies arise between internal and external EU human rights policies? Illustrative examples?
2. What opportunities and challenges will the Lisbon Treaty likely present with regard to the coherence of EU human rights policy?
3. What impact do you consider may come about with the EC Communication on Fundamental Rights policy to be presented in the autumn of 2010?
4. Will the EU’s accession to the European Convention on Human Rights promote or hinder internal-external EU human rights policy consistency?

5. What practical measures should the EU take to promote greater consistency and coherence between internal and external EU human rights policies?
6. What can be done to improve dialogue between the EU and its Member States on human rights issues which remain within Member State competence, including Member State implementation of UN human rights treaty body or other recommendations?
7. How can civil society organizations further assist the EU to enhance the coherence of its human rights strategies, policies, programmes and projects?

*Participants are encouraged to formulate responses and concrete recommendations to these questions, as well as to those put forward in the background paper on the general theme of the Forum. Your responses and recommendations will constitute a vital part of the final report and the basis for possible further follow-up to this Forum.*

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European Commission

# 12th EU-NGO Forum on Human Rights

## Brussels, 12 & 13 July 2010 - Participants list

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